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**In Equity, No. 420.**

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**In the District Court of the United States,  
District of Utah.**

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**UNITED STATES OF AMERICA, PETITIONER,**

*v.*

**SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC  
RAILWAY COMPANY ET AL., DEFENDANTS.**

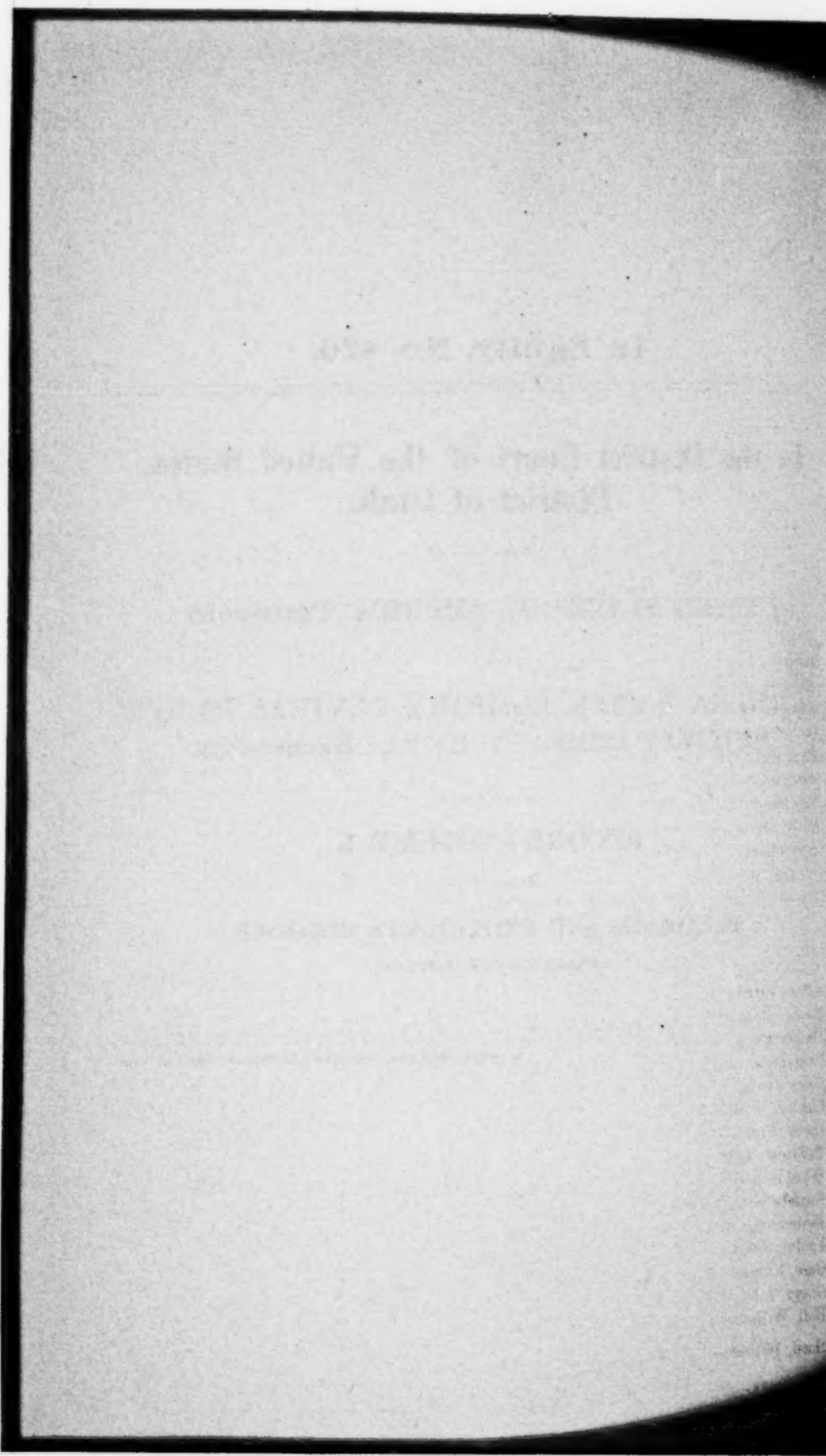
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**RECORD—VOLUME 1.**

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IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE DISTRICT OF UTAH.

In Equity, No. 420.

UNITED STATES, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, AND OTHERS,  
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In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius P. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, Defendants.

*Original petition.*

(Filed February 11, 1914.)

*To the honorable the judges of the District Court of the United States for the District of Utah, sitting in equity:*

The United States of America, by its attorney for the District of Utah, acting under direction of the Attorney General, brings this proceeding in equity against Southern Pacific Company, Central Pacific Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills.

The defendants above named are restraining and attempting to monopolize, and are monopolizing, trade and commerce in respect of the transportation of persons and property between the points hereinafter mentioned, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and are violating the provisions of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," as amended and supplemented (the last-mentioned act and the amendments and supplements thereto being known and hereinafter referred to as the Pacific railroad laws). This proceeding is brought to prevent and restrain the defendants from further violating the aforesaid acts of Congress.

On information and belief petitioner alleges and shows:

I.

3 Southern Pacific Company is a Kentucky corporation, with general offices at Beechmont, in that State, and with other offices in San Francisco, California, and New York City.

Central Pacific Railway Company is a Utah corporation, with general offices at Salt Lake City, Utah.

Union Trust Company of New York is a New York corporation, with its principal offices in New York City, and, as trustee for the Southern Pacific Company under a certain mortgage, more particularly described hereinafter, holds the capital stock of the Central Pacific Railway Company.

William Sproule is a resident of San Francisco, California, and is president and a director of the Southern Pacific Company and a director of the Central Pacific Railway Company.

Julius Kruttschnitt is a resident of New York City, New York, and chairman of the executive committee of the Southern Pacific Company and a director thereof.

Lewis J. Spence is a resident of New York City, New York, and a director of the Southern Pacific Company and its director of traffic, and also traffic manager of the Central Pacific Railway Company.

Ogden Mills is a resident of Staatsburg, New York, and a director of the Southern Pacific Company.

4 Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, Robert Goelet, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoee F. Loree, Eric P. Swenson, and James N. Wallace, are each residents of New York City, New York, and directors of the Southern Pacific Company.

The said William Sproule, as president and as a director, and the said Julius Kruttschnitt, as chairman of the executive committee and as a director, and the other directors above named, as such, being all of the directors of the Southern Pacific Company, control and direct the policies and acts of both the Southern Pacific Company and the Central Pacific Railway Company, and are responsible for the continuance of the hereinafter-described combinations and monopolizations in restraint of interstate and foreign trade and commerce, effected by said Southern Pacific Company through its domination, control, and operation of the Central Pacific Railway Company, and are likewise responsible for the violation by said companies of the laws herein referred to as the Pacific railroad laws.

## II.

Southern Pacific Company owns and operates the "Sunset Route," joint rail-and-water service which moves traffic between New York and Pacific coast terminals in California and Oregon. This route is composed of the fleet of the Southern Pacific Company known as the "Atlantic Steamship Lines," whose vessels ply regularly between New York and the Gulf ports of New Orleans, Louisiana, and Galveston, Texas, and of railroads forming an unbroken line between these Gulf ports and San Francisco, California, and Portland, Oregon. These railroads are owned by corporations which have leased them to the Southern Pacific Company, the latter also controlling such lessee corporations through stock ownership. The names of the controlled companies and the lines of this through railroad line owned by them, respectively,

- (1) Morgan's Louisiana and Texas Railroad and Steamship Company, a Louisiana corporation, which owns the line from New Orleans to Lafayette, Louisiana, together with branch lines.
- (2) Louisiana Western Railroad Company, a Louisiana corporation, which owns the line from Lafayette, Louisiana, to Sabine River, Texas, together with branch lines.
- (3) Texas and New Orleans Railroad Company, a Texas corporation, which owns the line from Sabine River to Houston, Texas, together with branch lines.
- (4) Galveston, Harrisburg and San Antonio Railroad Company, a Texas corporation, which owns the line from Houston and from Galveston, Texas, to Rio Grande, New Mexico, together with branch lines.
- (5) Southern Pacific Railroad Company, a California corporation, which owns the line from Rio Grande, New Mexico, via Yuma, Arizona, to Los Angeles, California, and two routes thence to San Francisco, California—the "Coast Line" via Santa Barbara and the "San Joaquin Valley Line" via Fresno.

The Southern Pacific Railroad Company also owns a line from San Francisco to Tehama, California, and another from the northern boundary of California to Portland, Oregon, and controls through stock ownership various other corporations which own railroads in California, Arizona, and New Mexico.

The Southern Pacific Company also owns a majority of the capital stock of the Pacific Mail Steamship Company, which operates a line of steamships from San Francisco to Hawaii and the Philippine Islands, China, Japan, and other Oriental points. It likewise owns and controls a line of steamships from San Francisco to Panama,

which, in connection with the Panama Railroad crossing the Isthmus and ships running in connection therewith, constitutes a through line from San Francisco to New Orleans and New York City. It also owns and operates a line of steamships from New Orleans to Havana, Cuba.

The Central Pacific Railway Company was formed July 20, 1869. It owns the following railroads:

- (1) A line from near Ogden, Utah, to San Francisco, California.
- (2) A line extending north from Roseville, California, via Marysville, Tehama, and Weed, to the northern boundary of California.
- 7 (3) A line running from the northern boundary of California to Kirk, Oregon, and a short line from Oakridge to Natron, Oregon.
- (4) A line from Lathrop, California, extending in a southerly direction to Goshen Junction, California.
- (5) A line from Oakland to San Jose, California, and a line from Niles to Redwood, California.
- (6) A line about five hundred miles long, extending from Hazen, Nevada, in a southerly direction, to Mojave, California.
- (7) Important branch lines in Nevada and California.

It also owns about four hundred locomotive engines and about ten thousand cars—including passenger, baggage, postal, dining, observation, refrigerator, and freight cars—and depots, station houses, telegraph lines, wharves, piers, car and repair shops, together with appurtenances, tools, and other equipment used in the maintenance and operation of its railroad.

The Central Pacific Railway Company is successor to the Central Pacific Railroad Company, all of whose properties it purchased in 1899. The last-named company had been formed in 1870, by successive consolidations, under the laws of California, of the following corporations:

8 The Central Pacific Railroad Company of California, the Western Pacific Railroad Company, the San Francisco, Oakland and Alameda Railroad Company, the San Joaquin Valley Railroad Company, and the California and Oregon Railroad Company, all California corporations.

The said Central Pacific Railroad Company of California is the same railroad company mentioned in the act of Congress approved July 1, 1862 (12 Stat., 489), and in the various acts amendatory and supplemental thereto. The Western Pacific Railroad Company is the same corporation mentioned in the act of Congress of March 3, 1865, and May 25, 1866, amending said act of July 1, 1862 (13 Stat. 504; 14 Stat., 356).

Said Southern Pacific Company owns the capital stock of the Central Pacific Railway Company and, since April 1, 1885, has controlled and operated under certain leases its several properties.

On August 1, 1899, the Southern Pacific Company executed an instrument known and hereinafter referred to as the "Southern Pacific Company's four per cent mortgage (Central Pacific Company's stock collateral)", to secure \$36,818,500 of four per cent bonds, secured by pledge with the Union Trust Company of New York of practically the entire stock of the Central Pacific Railway Company—\$67,275,000 common and \$17,400,000 preferred—which stock this trust company holds as collateral security for the satisfaction of said indebtedness.

### III.

California was the first portion of the Pacific slope to be exploited by American enterprise. It was cut off from the settled regions of the country by a wilderness. From the time of its acquisition proposals, inspired by various motives, some military or political, and others commercial, were repeatedly made to Congress to connect it with the trans-Mississippi States by a railroad either owned or aided by the Government. Domestic and foreign complications gave further impetus to this movement, which culminated in the Pacific railroad act of 1862 (12 Stat., 489). This act chartered the Union Pacific Railroad Company, whose powers and duties were prescribed therein and in amendatory acts. It further provided for the construction in sections of a transcontinental line, and for the issue of land patents and interest-bearing bonds of the United States to the said Union Pacific Railroad Company and to associated enterprises, including the above-mentioned Central Pacific Railroad Company of California and Western Pacific Railroad Company, as successive sections of their several railroads should be completed. Of the various routes that had been suggested Congress selected what is known as the "Northern Route", extending from a point on the Missouri River opposite Council Bluffs, Iowa, to the California coast via Ogden, Utah. It was under this act, as subsequently amended and supplemented, that the Union Pacific Railroad Company built that section of this through line between the Missouri River and Ogden, and the Central Pacific Railroad Company of California and the Western Pacific Railroad Company together completed the line to San Francisco. The line from a point about five miles west of Ogden to San Francisco is about seven hundred and thirty-seven miles in length.

The general purposes of the act of 1862 are indicated by its title, already quoted. In section 18 the purposes of the act are thus stated:

"And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act."

The far-reaching plans of Congress are thus plainly disclosed. It was intended that the road, although built by different companies, should be run as one connected, continuous through line. Section 12 of the act of 1862 (12 Stat., 489) contains the following requirement, which is substantially repeated in section 15 of the act of 1864, cited below:

11 "The track upon the entire railroad and branches shall be of uniform width, to be determined by the President of the

United States, so that, when completed, cars can be run from the Missouri River to the Pacific coast \* \* \*; the whole line of said railroad and branches and telegraph line shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and Government are concerned, as one connected, continuous line."

Notwithstanding the liberal provisions of the act of 1862, work on the transcontinental line did not progress rapidly. This led to the amendatory act of July 2, 1864 (13 Stat., 356), which doubled the land grants, accepted on behalf of the Government a second, in lieu of a first, mortgage, and provided that only one-half of the compensation for services rendered for the Government by said companies should be required to be applied to the payment of bonds issued by the Government in aid of the construction of said road.

This legislation required that the railroads so constructed should afford and secure to each equal advantages and facilities as to rates, time, and transportation, without any discrimination of any kind in favor of the road or business of any or either of the others. (13 Stat., 356, sec. 15.)

The act approved June 30, 1874 (18 Stat., 111), made it an offense for any officer or agent of the companies authorized to construct the railroads composing this transcontinental line, or who engages in their operation, to refuse or fail so to use or operate the same.

## IV.

The "Sunset Route" of the Southern Pacific Company is a natural competitor of all other carriers operating between points on the Atlantic coast and in the Middle West on the one hand and points on the Pacific coast and in the Orient on the other.

With the line of the Union Pacific Railroad Company extending from Ogden to Council Bluffs, and its various connections running to the Atlantic seaboard, the line of the Central Pacific Railway Company is and, since its construction, has been a constituent part of a through all-rail transcontinental route for the movement of interstate and foreign traffic between points on the Atlantic seaboard and in the Middle West on the one hand, and all points on the Pacific coast of the United States, as well as points in the Orient, on the other.

The Central Pacific Railway Company, in conjunction with its aforesaid connections, is, and for many years has been, a natural competitor of the Southern Pacific Company in the transportation of traffic between the points above named. The volume of traffic for which said lines are natural competitors is large and important.

The lines of the Central Pacific Railway Company connect at or near Fresno, California, with those of the Atchison, Topeka & Santa Fe Railway Company, and form, with other connections of the last-named company, a route which is in natural competition with the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and many other points in central and northern California, on the one hand, and points in Arizona, New Mexico, Texas, and Louisiana, including Phoenix, El Paso, San Antonio, Houston, Galveston, and New Orleans, on the other.

The lines of the Central Pacific Railway Company connect at San Francisco Bay with various steamship lines engaged in coastwise and foreign trade (including lines operating between Pacific and Atlantic ports via the Isthmuses of Panama and Tehuantepec), and from ports in Alaska, Hawaii, the Philippines, and Asia; and the through routes so formed are natural competitors of the Southern Pacific Company and its water-line connections hereinabove described.

The Central Pacific Railway Company is now constructing a railroad from Weed, California, to Natron, Oregon, where it will connect with lines of the Southern Pacific Company leading to Portland, about one hundred miles to the north. If independent of the Southern Pacific Company, the Central Pacific Railway Company, at moderate cost, could extend its line from Natron to Portland, or

in consideration of trackage rights granted to the Southern Pacific Company between Tehama and the northern boundary of California, the Central Pacific Railway Company could obtain similar 14 trackage rights over the Southern Pacific line between Natron and Portland. This accomplished, there would be in place of the present single railroad two competitive railroads between San Francisco and Portland. Petitioner alleges on information and belief that if the Central Pacific were thus free to act in its own interests the existence of two such competitive railroads would in the near future become an assured fact.

The lines now owned by the Central Pacific Railway Company, in so far as then existing, were operated prior to 1885 in connection with the lines of the Union Pacific Railroad Company as a continuous connecting route between San Francisco and the Missouri River, with connections eastward to the Atlantic Ocean, and were in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation.

## V.

By an instrument dated February 17, 1885, all railroads, equipment, and other properties owned by the Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, were leased to the Southern Pacific Company for a term of ninety-nine years, and all leases of the Southern Pacific Railroad Company's properties held by said Central Pacific Railroad Company were by the same instrument transferred to said Southern Pacific

Company. Under that and subsequent leases and amendments 15 the Southern Pacific Company has ever since controlled and operated said properties and the additions thereto. One of such subsequent leases, dated December 7, 1893, by article 5, expressly abrogated the lease of February 17, 1885. Copies of these several instruments are hereto attached, marked "Exhibit A", and made a part hereof.

On February 29, 1912, the Central Pacific Railway Company purchased numerous short railroad lines, aggregating about seven hundred miles, in California and Oregon, composing for the most part the line hereinbefore described as extending from Hazen, Nevada, to Mojave, California, and between Weed, California, and Natron, Oregon. On March 1, 1912, these lines were leased to the Southern Pacific Company, which has since operated and controlled them.

Shortly after the organization of the Central Pacific Railway Company, in 1899, and its acquisition of the properties of the Central Pacific Railroad Company, the Southern Pacific Company pur-

based all of its capital stock, and has since continued to be the owner thereof.

Both the Southern Pacific Company and the Central Pacific Railway Company are directed and controlled by a single management—that of the Southern Pacific Company; the officers and directors of the Southern Pacific Company exercise similar functions in the control, management, and operation of the Central Pacific Railway Company; the maintenance of both lines is under the direct supervision and control of the chairman of the executive committee of the Southern Pacific Company, whose headquarters are in New York City. All of the mileage and business of the Central Pacific Railway Company are thus under the direct, single, and complete control of the Southern Pacific Company, both as to rates and the routing of passengers and freight.

The Southern Pacific Company acquired the capital stock of the Central Pacific Railway Company and leased the properties of that company with the purpose and effect of preventing competition between the lines of the said Central Pacific Railway Company and its connections and the lines of the Southern Pacific Company in the transportation of passengers and freight in interstate and foreign commerce.

Also, the control of the Central Pacific Railway Company by the Southern Pacific Company prevents the establishment of a competitive route between San Francisco and Portland as aforesaid.

Again, that portion of the line of the Central Pacific Railway Company, hereinbefore described as extending from Hazen, Nevada, to Mojave, California, connects at the latter point with lines of the Atchison, Topeka & Santa Fe Railway Company, and with connections of the last-named company forms a route which, with joint traffic or prorating arrangements between the two companies, would be in natural competition with the Southern Pacific Company and its connections for traffic between points on the Central Pacific Railway Company and tributary territory and points in Arizona, New Mexico, Texas, and other Southern States; but through the control of the Central Pacific Railway Company by the Southern Pacific Company the establishment of such joint traffic or prorating arrangements between the former and the Atchison, Topeka & Santa Fe Railway Company is prevented.

The ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company, and its leases of the properties of that company, and its deminution, management, and control thereof, as hereinabove set forth, constitute a combination in restraint of interstate and foreign trade and commerce and

a monopolization thereof in violation of the act of July 2, 1890 (26 Stat., 209).

## VI.

As aforesaid, one of the objects of the Pacific railroad laws was to aid the construction of a transcontinental route for the movement of interstate and foreign traffic. It was further intended that such route should be controlled, managed, and operated as one continuous, connected line without discrimination against or adverse to the interests of any of its constituent parts.

In respect of traffic carried over the "Sunset Route" between points on the Atlantic and Pacific coasts and tributary territory, the Southern Pacific Company secures the entire haul and, consequently, the entire revenue. In respect, however, of traffic carried between such points via the lines of the Central Pacific Railway Company through the Ogden gateway, the Southern Pacific Company secures the haul only from San Francisco to Ogden—less than eight hundred miles out of a total of about three thousand two hundred miles; and consequently receives but about twenty-five percent of the revenue. Therefore, it is in the interest of the Southern Pacific Company to carry, and by reason of its control of the Central Pacific Railway Company it has the power to and does carry, as much of such traffic as possible via its "Sunset Route", sending through the Ogden gateway only such portion thereof as it is unable to control for the "Sunset Route", thereby discriminating against the Central Pacific Railway Company.

By reason of its greater interest in the "Sunset Route", the Southern Pacific Company, in its operation of the line of the Central Pacific Railway Company from San Francisco to Ogden as a part of a continuous connected line from the Missouri River to the Pacific Ocean, does not give to such line equal advantages and facilities, as required by the Pacific railroad laws, but discriminates against both the Central Pacific and Union Pacific lines and in favor of its "Sunset Route" by forwarding via the latter traffic originating or ending on the lines of the Central Pacific Railway Company or in territory tributary thereto.

19 Through its control of the Central Pacific Railway Company the Southern Pacific Company prevents joint traffic or prorating arrangements between the former and the Union Pacific Railroad Company, naturally its most important transcontinental and interstate connection.

The Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and

Union Pacific railroads and other eastern connections, thereby preventing competition and denying equal advantages and facilities as to rates, time, and transportation.

Maintenance by the Southern Pacific Company of Central Pacific Company's properties, moreover, compared with that of the "Sunset Route", is so inefficient as to discourage eastern travel and transportation via the Ogden route, and does not afford and secure thereto equal advantages and facilities as to time and transportation.

The Southern Pacific Company has heretofore, and does now, control, maintain, and operate said Central Pacific Railway Company in the interest of its "Sunset Route" and adverse to the interest of the Central and Union Pacific companies, and has not and does not afford or secure to said Central and Union Pacific companies equal advantages and facilities as to rates, time, and transportation, all in violation of the Pacific railroad laws.

## VII.

### Prayer.

Wherefore petitioner prays:

- (1) That writs of subpoena issue directed to the several defendants herein, commanding them and each of them, to appear herein and answer, but not under oath (that being expressly waived), the foregoing allegations, and to abide by and perform such orders or decrees as the court may make.
- (2) That the court adjudge and decree that the lines of railway and transportation known and herein described as the "Sunset Route", operated by the Southern Pacific Company, and those of the Central Pacific Railway Company, constitute competitive systems, and that the ownership by the defendant Southern Pacific Company of all or a controlling interest in the capital stock of the Central Pacific Railway Company, and its lease, control, and operation of the lines thereof, constitutes a combination in restraint of interstate and foreign trade and commerce, and an attempt to monopolize and a monopolization of a part of the same within the first and second sections of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and that said Southern Pacific Company be required to dispose of such capital stock, and cancel and relinquish its lease, control, management, and operation of the lines thereof, under the supervision and direction of the court, to persons not its stockholders or agents, nor otherwise under its control or influence; and that, pending such disposition

and release, it be enjoined from voting such stock, and from receiving dividends in respect of any part thereof, and from receiving any profits, emoluments, reward, or advantage in any way arising from the lease, control, management, and operation of the lines of said Central Pacific Railway Company.

(3) That the defendant Central Pacific Railway Company, its stockholders, officers, directors, agents, and servants, and each of them, be perpetually enjoined from in any manner recognizing or accepting the Southern Pacific Company, or any person or corporation acting in its interest, as the owner or holder of any of the shares of its capital stock, and from permitting said Southern Pacific Company, or any person or corporation acting for it, or in its interest, to vote such stock (whether by proxy or otherwise), and that it be enjoined from paying dividends upon such stock to said Southern Pacific Company, or to any person or corporation acting for it, or to any assigns of such company, unless authorized by the court, and from recognizing as valid any transfer, mortgage, pledge, or assignment of such stock by said Southern Pacific Company, or by any person or corporation in its interest, unless authorized by the court.

22 (4) That the control of the Central Pacific Railway Company by the Southern Pacific Company be decreed to be in violation of the aforesaid act of Congress of July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", and the acts amendatory thereof and supplemental thereto; and that said Southern Pacific Company, and its officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined from doing any act which will continue or tend to continue the domination, control, and operation of the Central Pacific Railway Company by the Southern Pacific Company, or by any person or corporation in its interest.

(5) That petitioner have such other further and general relief as the nature of the case may require and the court deem just.

WILLIAM W. RAY,

*United States Attorney, District of Utah.*

J. C. McREYNOLDS,

*Attorney General.*

G. CARROLL TODD,

*Assistant to the Attorney General.*

JAMES W. ORR,

*Special Assistant to the Attorney General.*

## EXHIBIT A.

~~Less~~—Central Pacific Railroad Company to Southern Pacific Company.

This agreement, made and entered into this seventeenth (17) day of February, 1885, between the Southern Pacific Company, a corporation duly organized and existing under the laws of the State of Kentucky, and now doing business in the State of California, and the Central Pacific Railroad Company, a corporation duly formed and existing under the laws of the State of California and the United States,

Witnesseth:

That whereas part of the through business heretofore done by the Central Pacific Railroad Company's line from Ogden to the waters of the Pacific has been diverted by the Northern Pacific, Atlantic and Pacific, and Atchison, Topeka and Santa Fe Railroads;

And whereas the Union Pacific Railroad Company has secured the control of the road known as the Oregon Short Line, and thereby secured an outlet to the Pacific other than over the Central Pacific Railroad, and thus in that respect placed itself in opposition to the interests of the Central Pacific;

And whereas it now appears that the through business hitherto done by the Central Pacific Railroad will thereby be further diverted; and that it is not only to the best interests of, but absolutely necessary that, the Central Pacific Railroad Company, in order to maintain itself against these diversions, should be operated in connection with a friendly through line to the waters of the Atlantic;

And whereas the said Southern Pacific Company has a line of railroad under its control, for a period of ninety-nine years, extending continuously from the Pacific Ocean to the Atlantic Ocean;

And whereas the lines of each company are doing a large local traffic, and it is important to both that the same should be conducted in harmony;

And whereas the said Southern Pacific Company is willing to enter into an agreement with the Central Pacific Railroad Company whereby its line and the line of the said Southern Pacific Company shall be operated so as to secure their just rights to each without the one gaining any benefit or advantage at the expense of the other, and whereby the Central Pacific Railroad Company may for a long term of years be assured of protection against the diversion of its traffic and be relieved of the disadvantages flowing from lack of harmonious connections;

And whereas by reason of the facts before recited it is mutually advantageous to the Southern Pacific Company and the Central Pacific Railroad Company to make such agreement;

And whereas both companies contract in the knowledge that the future development of the country may change materially the relations of the companies to each other in respect to railroad traffic, and may in the future render any agreement now made, however fair in its terms in view of existing conditions, advantageous to one at the expense of the other, and thereby defeat the purposes which said companies desire and intend to accomplish by making this agreement;

And whereas it is intended that such shall never be the effect of this agreement, therefore all the promises and covenants herein shall be construed in the light of the conditions now existing, and the arbitrators hereinafter named, in adjusting the terms and provisions of this agreement to a changed state of affairs, if such change should ever take place, must keep in view the main purpose of the parties to this agreement, to wit: That it is for the mutual advantage of both parties, and that neither is to be benefited at the expense of the other;

Now, therefore, to accomplish the purposes aforesaid, in consideration of the premises and of the mutual promises herein, the said Central Pacific Railroad Company hereby leases to the said Southern

25 Pacific Company, for the term of ninety-nine years, from the first day of April, A. D. 1885, the whole of its railroad situated in the Territory of Utah and States of Nevada and California, and known and designated as the Central Pacific Railroad, together with all the branches thereof, together with all the rolling stock, telegraph lines, steamboats, wharves, piers, depots, workshops, and all other property, real and personal, now owned, held, and possessed by the said Central Pacific Railroad Company and used upon or in connection with said railroad and telegraph lines, together with all the appurtenances thereunto belonging, with the right to possess, maintain, use, operate, and enjoy the said property, and to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby assigns to the said Southern Pacific Company all the leases which it now holds of railroads and other property situated in said State of California, and lying and being north of the town of Goshen, in the county of Tulare, with the right to take, hold, operate, maintain, and enjoy said railroads and other property in the same manner as the said Central Pacific Railroad Company holds, operates, enjoys, and maintains the same under the said leases, and with the right to receive the rents, issues, and profits thereof.

And the said Central Pacific Railroad Company hereby releases the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the United States and of the State of California, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of Arizona, and the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the Territory of New Mexico, and each of them, from all and every obligation under or by virtue of any and every lease made by said three last-mentioned railroad companies, or either of them, to the said Central Pacific Railroad Company, and transfers and surrenders unto the said Southern Pacific Company the possession of all the property in said leases, or any of them mentioned or described, with the right to receive the rents, issues, and profits thereof free from all claim of the said Central Pacific Railroad Company to the same or any part thereof.

26 The said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep and maintain the property hereby leased in good order, condition, and repair; operate, maintain, add to, and better the same at its own expense; pay all taxes legally assessed against or levied thereon, and will at the termination of this lease return the same to the said Central Pacific Railroad Company or to its successors or assigns (with additions and betterments) in as good condition and repair as the same was at the date hereof.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it hereby assumes and will discharge all the liabilities and obligations of every kind (including its obligations on leases now held by it) of the said railroad company, except the obligation to pay the principal of said railroad company's indebtedness known as its "floating debt", and except the obligation to pay the principal of the indebtedness of said railroad company known as its "bonded indebtedness", now outstanding and secured by mortgage or deed of trust, or which may be hereafter incurred under the provisions of any existing mortgage or deed of trust, or of any mortgage or deed of trust hereafter made with the consent of the Southern Pacific Company; and except the principal of all indebtedness, the payment of which has heretofore been guaranteed by the Central Pacific Railroad Company; and except the principal of the indebtedness of the said Central Pacific Railroad Company evidenced by bonds of the United States heretofore by the Government thereof loaned to the said Central Pacific Railroad Company. That as to such excepted indebtedness the said Southern Pacific Company will pay off and discharge at maturity the interest upon the same, except the interest upon the bonds of

the United States loaned as aforesaid; and that, as to such bonds and the interest thereon, the said Southern Pacific Company will discharge the annual obligations imposed upon the said Central Pacific Railroad Company by existing acts of Congress, and will during the continuance of this agreement fully comply with the terms of, perform all the duties prescribed in, and discharge 27 all the obligations imposed upon said Central Pacific Railroad Company by the act of Congress commonly known as the Thurman Act.

And the said Southern Pacific Company hereby agrees to and with the said Central Pacific Railroad Company that it will well and truly perform all the duties and obligations of said railroad company to the United States and the Government thereof under existing acts of Congress relating to the maintenance and operation of its railroad and to transportation for said Government over the same as fully and faithfully as said railroad company is bound to do, except as otherwise hereinbefore provided.

And the said Southern Pacific Company agrees to and with the said Central Pacific Railroad Company that it will keep true and faithful accounts of all the earnings of the said Central Pacific Railroad, including the earnings of the railroads now held by said Central Pacific Railroad Company under leases and situated north of Goshen, together with true and faithful accounts of all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, and disbursements made by the said Southern Pacific Company for taxes, rentals, interest, or in discharge of obligations incurred by said Southern Pacific Company under the provisions of this agreement hereinbefore contained: Provided, however, That any payments made by the said Southern Pacific Company to either of the said Southern Pacific railroads hereinbefore mentioned for rentals under the terms of existing leases in favor of the said Central Pacific Railroad Company, and now assigned to the Southern Pacific Company, shall never be included in or made part of any charge against the said Central Pacific Railroad Company or the earnings of its said railroads.

And the said Southern Pacific Company hereby agrees with the said Central Pacific Railroad Company that during the continuance of this lease it will annually, on the first Monday in May, pay to the said Central Pacific Railroad Company, as guaranteed rental for said Central Pacific Railroad and other leased property for the year ending on the thirty-first day of December next preceding that date, the sum of one million two hundred thousand dollars 28 (\$1,200,000). And the said Southern Pacific Company hereby

ther in this behalf agrees with the said Central Pacific Railroad Company that if the earnings of the said Central Pacific Railroad, and of the railroads situated north of Goshen now held by the said Central Pacific Railroad Company under leases, shall in any year during the continuance of this agreement exceed all expenditures, payments, and disbursements of every kind made by the said Southern Pacific Company for such year in operating, maintaining, adding to, and bettering the same, and of all expenditures, payments, disbursements made by the said Southern Pacific Company for taxes, rentals, interest, and in discharge of any of the obligations by said Southern Pacific Company incurred under this agreement, as heretofore provided, including the said sum of one million two hundred thousand dollars, then such excess for any such year not exceeding the sum of two million four hundred thousand dollars shall, on the first Monday in May, as aforesaid, be paid to the said Central Pacific Railroad Company as additional rental for such year.

And it is further agreed between said Southern Pacific Company and the said Central Pacific Railroad Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed, so that such will not be the operation hereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested, but skilled in relation to the subject matter, and the award and decision of such arbitrators, in writing, shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and as revised and changed shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen cannot agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award or decision of two of said three arbitrators shall have the same force and effect between the parties hereto and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

And it is further agreed between the said Southern Pacific Company and the said Central Pacific Railroad Company that if any legislation or governmental action hereafter be had which, in the opinion of the said Southern Pacific Company, is in hostility to the said Central Pacific Railroad Company, its rights, or the property hereby leased, the said Southern Pacific Company may, on notice to the said Central Pacific Railroad Company, terminate this agree-

ment, or may submit to arbitrators in the manner and with the effect hereinbefore provided for, changes, and revisions.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that, upon the execution of this agreement, the said Southern Pacific Company may enter upon, take possession of, and hold during the continuance of this agreement all the property, real and personal, hereby leased by the said Central Pacific Railroad Company to the said Southern Pacific Company, and that duplicate lists of all the rolling stock and other personal and movable property so leased, showing its condition at the time of the execution of this agreement, shall be made and certified by the secretary of each of said companies, and that one of said lists shall be kept by each of said companies.

And it is further agreed between the Southern Pacific Company and the Central Pacific Railroad Company that if at any time any of the rolling stock or other personal property hereby leased to the said Southern Pacific Company by said Central Pacific Railroad Company be used upon any roads other than the Central Pacific Railroad or the leased roads north of Goshen, then the said Southern Pacific Company shall credit to the said Central Pacific Railroad Company the usual and customary sums paid by one railroad company to another for the use of the like property, and that the amounts so credited shall be deemed and taken to be a part of the earnings of said Central Pacific Railroad Company.

And it is further agreed that if, in the operation of said Central Pacific Railroad and leased roads north of Goshen, it become 30 necessary to use any of the rolling stock or other personal property of the Southern Pacific Company, not leased from the Central Pacific Railroad Company, upon the said Central Pacific Railroad or leased roads north of Goshen, that the usual and customary sums paid by one railroad company to another for the use of like property, shall be allowed as, and constitute a charge against, the receipts of the said Central Pacific Railroad and said leased lines, and be so considered in the accounting hereinbefore provided for.

In testimony whereof the said Southern Pacific Company and the said Central Pacific Railroad Company have caused these presents to be signed by their respective presidents, countersigned by their secretaries, and their corporate seals to be hereunto affixed,

suant to orders of their respective boards of directors, the day  
year first herein written.

In duplicate.

(S.P. Co. corporate seal.)

W. E. BROWN,  
President Southern Pacific Co.

L. C. NASH,

Secretary Southern Pacific Co.

(C.P.R.R. Co. corporate seal.)

LELAND STANFORD,  
President Central Pacific Railroad Co.

L. H. MILLER, JR.,

Secretary Central Pacific Railroad Co.

Central Pacific Railroad Company to the Southern Pacific Company—Modification of Lease.

This agreement made and entered into this first day of January, 1887, by and between the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and the Central Pacific Railroad Company, a corporation formed and existing under the laws of the State of California in the United States:

Whereas, heretofore and under date of February 17, 1885, an agreement of lease was made and executed by and between the parties hereto; and

Whereas, since the date of the execution of such lease, the lines of railroad of the Central Pacific Railroad Company have been extended from Delta, in the State of California, to the boundary line between the States of California and Oregon, forming the last-mentioned point a connection with the line of railroad of Oregon and California Railroad Company; and

Whereas, since the execution of such lease, and in or about December, 1887, the said line of railroad to the boundary line between the States of California and Oregon, constituting part of the line from San Francisco, in California, to Portland, in Oregon, has been delivered by the Central Pacific Railroad Company to the Southern Pacific Company for operation, and the railroad properties operated by the Southern Pacific Company as lessee of the Central Pacific Railroad have been materially changed; and

Whereas, by reason of the premises the Central Pacific Railroad Company has requested a modification of the terms and provisions of the agreement of lease above referred to;

Now, therefore, this agreement witnesseth:

That in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto have undertaken covenanted, and agreed, and do hereby undertake, covenant, and agree to and with each other, as follows, that is to say:

That the said Southern Pacific Company, in lieu and stead of and substitution for the payment of rental by it to said Central Pacific Railroad Company as in said lease prescribed, shall pay to the said Central Pacific Railroad Company, on the first Monday in May 1889, and on each first Monday of May thereafter during the continuance of said lease, as guaranteed rental for the year ending on December 31st next preceding that date, the sum of one million three hundred and sixty thousand dollars (\$1,360,000) instead of the sum of one million two hundred thousand dollars (\$1,200,000), which is in said original agreement prescribed, and is to be paid on the first day of May, 1888, in respect of the year ending December 31

1887, and will pay to the Central Pacific Railroad Company

32 on the first Monday of May in each year, as additional rental for the year terminating on December 31st, preceding, any excess up to but not beyond the sum of two million seven hundred and twenty thousand dollars of the earnings in such preceding year of the said Central Pacific Railroad above the expenditures, payments, and disbursements of every kind made by the Southern Pacific Company in operating, maintaining, adding to or bettering the same, or for taxes, rentals, interest, or in discharge of any of the obligations of said Southern Pacific Company incurred under said agreement of lease, or as the same is hereby modified, including the guaranteed rental above mentioned, and that the said agreement of lease shall be and is hereby modified accordingly.

In witness whereof the parties hereto have caused these presents to be signed by their respective second vice presidents and countersigned by their respective secretaries, and their respective corporate seals to be hereunto affixed, pursuant to orders of their respective boards of directors, the day and years first above written.

(S. P. Co. corporate seal.)

CHAS. CROCKER,

*Second Vice President Southern Pacific Company.*

G. L. LANSING,

*Secretary Southern Pacific Company.*

(C. P. R. R. Co. corporate seal.)

CHAS. CROCKER,

*Second Vice President Central Pacific Company.*

E. H. MILLER,

*Secretary Central Pacific Co.*

Agreement to lease between Central Pacific Railroad Company and Southern Pacific Company.

This indenture, made and entered into this seventh day of December, eighteen hundred and ninety-three, by and between the Central Pacific Railroad Company of the first part and the Southern Pacific Company of the second part.

Whereas heretofore and under date of the 17th day of February, 1885, an agreement of lease was made and entered into and between the parties hereto, which agreement of lease was afterwards modified by agreement between the same parties bearing the first day of January, 1888; and

Whereas the operation of the demised properties under such lease has resulted in very considerable losses to the said Southern Pacific Company, and it thereby appears that by the operation of said agreement the said Central Pacific Railroad Company has been and is being benefited at the expense of the Southern Pacific Company, and a necessity has therefore arisen for a revision and change of such lease so that neither party thereto shall be benefited at the expense of the other;

Now, therefore, this instrument witnesseth:

That in consideration of the premises such agreement of lease has and is hereby revised and changed by the parties hereto by substituting on and after the first day of January, 1894, for the existing provisions of such lease, as so modified as aforesaid, the terms, provisions, and conditions hereinafter provided and expressed, that is to say:

First. The party of the first part hereby leases to the party of the second part, for the period of ninety years from and including the first day of January next, the railroads of the party of the first part, together with its branches and leased lines, and all depots and station houses, equipments, and appurtenances of every kind and nature whatsoever to the said railroads, branches, and leased lines respectively belonging or appertaining.

Second. The party of the second part will pay to the party of the first a fixed yearly rental for the premises so leased, amounting to a sum of ten thousand dollars per annum, which rental shall be paid in four equal installments of twenty-five hundred dollars each on the first days of January, April, July, and October of each year during the pendency of this lease (excepting only the first day of January, eighteen hundred and ninety-four), it being understood and agreed that the amount of such rental, so far as requisite, shall be appropriated and applied by the party of the first part to the expenses of maintaining and keeping up its corporate organization.

Third. The party of the second part is to operate the said railroads, branches, and leased lines hereinbefore referred to. The said lessee shall apply the earnings and income derived therefrom to paying all operating expenses thereof and the incidental expenses connected therewith, including the sums payable for rentals of leased lines, and, according to their lawful priorities, to the payment of the current interest and sinking fund contributions or other payments from time to time becoming due and payable from the said Central Pacific Railroad Company, whether to the United States of America or to bondholders or others, during the existence of this lease.

And it is further provided and agreed by and between the parties hereto that on the first day of April in each year during the continuance of this lease the party of the second part shall pay to the party of the first part such balance, if any, of the net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for the year ending on the 31st day of December then next preceding, as shall remain in its hands after all the payments hereinbefore provided for or agreed or directed are made: Provided, however, That if at the time, viz: such 1st day of April, when such balance of such income or rental is provided to be paid to the party of the first part, there shall be any sum due or owing from the party of the first part to the party of the second part for or in respect of advances or payments theretofore made by the party of the second part to or for or upon the request of the party of the first part for new additions or improvements to the demised premises, or any part thereof, or for expenses of keeping up the corporate organization of the party of the first part, or maintaining agencies for the transfer of its stock and bonds, or for any expenses of its business or affairs other than such as fall within the payments before provided to be made by the lessee out of the earnings or income, or for or in respect of any other sums which

may have been lawfully advanced or paid by the lessee to or for the party of the first part, the party of the second part

shall be entitled to retain and pay to itself whatever may be owing to it from the party of the first part for or in respect of any of the causes or matters or considerations aforesaid, including any interest which may be due or owing from the party of the first part to the party of the second part thereon.

And provided further, That if such balance of net earnings or income received by the party of the second part from the said leased premises, with the appurtenances, for any year, and which by the foregoing provisions hereof would be and became payable by said party of the second part to said party of the first part, shall exceed

the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part, then and in that event the said party of the second part shall be entitled to and shall claim to itself for its own use one-half part of any and all excess of such balance of net earnings and income over and above the amount of six per cent per annum upon the par value of the then existing capital stock of the party of the first part.

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive interest upon such advances at the rate of six per cent per annum from the making until the reimbursement thereof, and the party of the second part shall have a lien for such advances, and the interest thereon, on the said demised premises and the income thereof until such advances are reimbursed, with interest, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary, in writing, at or before the making of such advances.

Fifth. The agreements between the same parties, dated February 1885, and January 1, 1888, respectively, are hereby canceled, except so far as they relate to operation of said demised premises prior to January 1, 1894, and adjustment of accounts in respect to such operation thereof.

Sixth. This indenture may be at any time modified in any of its terms or provisions or canceled by agreement of the parties thereto.

In witness whereof the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

[SAL.] **CENTRAL PACIFIC RAILROAD COMPANY,**  
Attest: **By H. E. HUNTINGTON, President.**

W. M. THOMPSON, *Secretary.*

[SAL.] **SOUTHERN PACIFIC COMPANY,**  
Attest: **By C. P. HUNTINGTON, President.**

G. L. LANSING, *Secretary.*

Between Central Pacific Railroad Company and Southern Pacific Company—Agreement.

Indenture, made and entered into this twenty-second day of March, 1894, by and between Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part.

Whereas, heretofore and under date of the 7th day of December, 1893, an indenture was made and entered into by and between the parties hereto, revising and changing the then existing agreement of lease between said parties, as by said indenture, dated the 7th day of December, 1893, by reference thereto will fully and at large appear; and

Whereas, it has been suggested, on behalf of the Central Pacific Railroad Company, that such last-mentioned indenture should be modified as hereinafter provided, and the Southern Pacific Company has assented to such proposed modification thereof;

Now, therefore, this indenture witnesseth:

That in consideration of the premises the parties hereto have  
37 undertaken, covenanted, and agreed, and do hereby undertake,  
covenant, and agree, to and with each other as follows, viz:

First. The said indenture, dated the 7th day of December, 1893, is hereby modified by substituting in lieu of article fourth of said indenture the following article, that is to say:

Fourth. If and so far as the party of the second part shall make any advances for payments for account of the party of the first part, the party of the second part shall be entitled to receive lawful interest upon all such advances from the making until the reimbursement thereof, and the party of the second part shall be entitled at any time and from time to time to refund to itself such advances and interest out of any net earnings or income of the demised premises which may be in its hands, unless it shall have been expressly agreed between the parties hereto to the contrary in writing at or before the making of such advances.

And it is further agreed between said Central Pacific Railroad Company and said Southern Pacific Company that if at any time it appears that by the operation of this agreement either party is being benefited at the expense of the other, then this agreement shall be revised and changed so that such will not be the operation thereof, and if the parties hereto can not agree upon the changes necessary to that end, then each party shall appoint one arbitrator, disinterested but skilled in relation to the subject matter, and the award and decision of such arbitrators in writing shall be binding upon the parties hereto, and this agreement shall be revised and changed in accordance with such award and decision, and, as revised and changed, shall be duly executed in writing by the parties hereto.

And it is further agreed that if the arbitrators so chosen can not agree upon an award and decision, then that the two shall choose a third impartial and skilled arbitrator, and that the award and decision of two of said three arbitrators shall have the same force and effect between the parties hereto, and shall be executed in like manner as hereinbefore provided for the award and decision of the two arbitrators first chosen.

Second. The said indenture, dated the 7th day of December, 1893, as so modified by the first article hereof, is hereby in all respects ratified, approved, and confirmed.

In witness whereof, the parties hereto have hereunto respectively affixed their corporate seals and caused these presents to be signed by their respective presidents and attested by their respective secretaries the day and year first above written.

Attest:

W

W. M. THOMPSON, *Secretary.*  
B. CO. 200. SOUTHERN

**SOUTHERN PACIFIC COMPANY,**  
**B. C. B. Humpreys, President.**

porate seal.) By C. P. HUNTINGTON, *President.*

Attest:

G. L. LANSING, *Secretary.*

This agreement, made and entered into this 15th day of April, A.D. 1897, by and between the Central Pacific Railroad Company, of the first part, and the Southern Pacific Company, of the second part,

Witnesseth:

That whereas, under existing arrangements between the parties hereto, it has been the practice that on the first day of April in each year while operating the railroad of the party of the first part, the party of the second part should pay to the party of the first part such balance of income or earnings of the railroad, with the appurtenances, received by the party of the second part for the year ending on the 31st day of December, then next preceding, as should remain in the hands of the party of the second part after the deduction of certain charges and expenses.

And whereas, it is to the convenience of both of said parties to change the dates of said accountings and settlements so as to conform to the reports required by the Interstate Commerce Commission and other governmental bodies and officers, by adopting as the ~~begin~~ therefor a fiscal year ending June 30th of each year, instead of December 31st:

Now, therefore, it is hereby agreed by and between the parties hereto, that hereafter all said balances shall be paid

on the first day of November of each year, and shall be for and on account of the year ending on the 30th day of June then next preceding, except that in the first settlement which shall be made under this agreement, to wit, that of November 1st, 1897, such settlement shall be made upon an accounting for the whole period from January 1st, 1896, to June 30th, 1897, both days inclusive.

In witness whereof, the said parties have caused these presents to be signed by their respective presidents or vice presidents, and secretaries, under their several corporate seals, the day and year first above written.

CENTRAL PACIFIC RAILROAD COMPANY,

(Corporate seal.) By ISAAC L. REQUA, President.

W. M. THOMPSON, Secretary.

SOUTHERN PACIFIC COMPANY,

(Corporate seal.) By C. P. HUNTINGTON, President.

E. C. WRIGHT, Secretary.

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, Defendants.

In Equity,  
No. 490.

*Answer of Defendants.*

Southern Pacific Company, Central Pacific Railway Company, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills.

These defendants reserving all manner of exceptions that may be had to the uncertainties and imperfections of the petition, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

Defendants above named deny that they, or any of them, are restraining, or attempting to monopolize or are monopolizing, trade

and commerce in respect to the transportation of persons and property between the points, or any of them, mentioned in said petition, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies".

Said defendants further deny that they, or any of them, are violating the provisions of the acts of Congress mentioned in the bill and described as the Pacific railroad laws.

## I.

Said defendants deny that Lewis J. Spence is traffic manager of the Central Pacific Railway Company.

Said defendants further deny that they, or any of them, are responsible for the continuance of any combination or monopolization in restraint of interstate and foreign trade and commerce effected by said Southern Pacific Company by its domination, control, and operation of the Central Pacific Railway Company, or otherwise, or that they, or any of them, are responsible for the violation by said companies of the said Pacific Railroad laws, or that said companies, either of them, in any way violate the said Pacific Railroad laws in any portion thereof.

## II.

Defendants deny that the Southern Pacific Company operates under lease or otherwise either the Morgan's Louisiana and Texas Railroad and Steamship Company, or the Louisiana Western Railroad Company, or the Texas and New Orleans Railroad Company, or the Galveston, Harrisburg and San Antonio Railway Company (incorrectly styled in the petition Railroad Company), and that said named corporations operate themselves through their own officers, the control exercised by the Southern Pacific Company being through stock ownership.

They further show that while the "coast line" of the Southern Pacific Railroad Company runs into San Francisco, the other of the two routes referred to in the petition terminates at the east end of Oakland Mole, where its tracks connect with the tracks of the Central Pacific Railway Company; and that the Southern Pacific Railroad Company does not own a line of railroad from the northern boundary of California to Portland, Oregon, the railroad referred to or intended to be referred to in the petition being the Oregon and California Railroad Company, which is under lease to the Southern Pacific Company.

Defendants deny that the Southern Pacific Company owns or controls a line of steamships from San Francisco to Panama, which,

in connection with the Panama Railroad across the Isthmus and steamships running in connection therewith, constitutes a through line from San Francisco to New Orleans and New York City.

It does, however, own a majority of the capital stock of the Pacific Mail Steamship Company, which operates a line of steamships from San Francisco to Panama, connecting there with the Panama Railroad across the Isthmus, and which thus performs part of transportation service from San Francisco to New York City; but de-

fendants aver that on or before July 1, 1914, and before the 3 opening of the Panama Canal, either the said Pacific Mail Steamship Company will have ceased to operate said steamships in said business and will not be engaged in any business in competition with any line of railroad owned or controlled by the Southern Pacific Company, or the last-named company will have disposed of its said stock and will not have any interest in or control over, directly or indirectly, the said Pacific Mail Steamship Company.

They further show that the railroad of the Central Pacific Railway Company runs from Ogden, Utah, to Oakland, California, via Niles, California, and not to San Francisco, the connection between Oakland and San Francisco being by boats and barges, and that subsection 5 of paragraph II of the petition should read to be correct, a line from Niles to San Jose, California, instead of "a line from Oakland to San Jose, California".

### III.

Said defendants deny that it was intended by Congress that the Central Pacific and Union Pacific lines, although built by different companies, should be run as one connected, continuous through line except as the intent of Congress is expressed in the said Pacific railroad laws.

### IV.

Said defendants deny that the Sunset Route of the Southern Pacific Company is a natural competitor of all other carriers operating between points on the Atlantic coast and the Middle West on the one hand, and points on the Pacific coast and in the Orient on the other hand.

Defendants further deny that the Central Pacific Railway Company, in conjunction with its connections, or otherwise, is, or has been, the natural competitor of the Southern Pacific Company in the transportation of traffic between the points above named.

Said defendants deny that the lines of the Central Pacific Railway Company connecting with those of the Atchison, Topeka & Santa Fe Railway Company, at or near Fresno, form, with other connections of the last-named company, a route which is in natural competition with the Southern Pacific Company and its connections for traffic between Tehama, Marysville, Sacramento, Oakland, San Francisco, San Jose, and other points in central and northern California, on the one hand, and points in Arizona, New Mexico, Texas, and Louisiana, including Phoenix, El Paso, San Antonio, Houston, Galveston, and New Orleans on the other.

Said defendants deny that the lines of the Central Pacific Railway Company, in connection with the various steamship lines engaged in coastwise and foreign trade, as forming through routes, or otherwise, are natural competitors of the Southern Pacific Company and its water line connections described in the petition.

Said defendants deny that the Central Pacific Railway Company, could, at moderate cost, extend its line from Natron to Portland.

Said defendants further deny that if the Central Pacific Railway Company were free to act in its own interest the existence of two competitive lines between San Francisco and Portland would, in the near future or at all, become an assured fact.

Said defendants deny that the line owned by the Central Pacific Railroad Company, as operated prior to 1885, in connection with the line of the Union Pacific Railroad Company, was in competition with the lines now operated by the Southern Pacific Company in interstate and foreign transportation, except that both prior and subsequent to 1885 the through route or routes formed by the line of the Central Pacific Railway Company from San Francisco to Ogden in conjunction with connecting railroads, including the Union Pacific Railroad Company, and their eastern connections, have carried traffic in competition with the said Sunset Route and with other transcontinental lines; but they deny that the common control of the Central Pacific Railway Company and the said Sunset Route, which has always existed and under which the said Southern Pacific System of lines (always included therein being the line of the Central Pacific Railway Company) were originally constructed and have subsequently grown and developed by usual and normal means, as hereinafter more fully stated, has prevented or created the power to prevent competition between said through routes or constitutes a restraint of trade or a monopoly or an attempt to monopolize trade, within the prohibition of the said act of July 2, 1890, or otherwise.

## V.

Said defendants deny that the lease or instrument dated December 7, 1893, copy of which is attached to the petition, expressly, or at all, abrogated the lease of February 17, 1885, copy of which is attached to said petition; on the contrary, defendants allege that the tenure of said lease of February 17, 1885, has never been interrupted or broken, and that the sole purpose of the instrument dated December 7, 1893, with the subsequent instrument of March 22, 1894, thereto, was to modify or change the terms and conditions of the original lease to meet new conditions and to make a fair adjustment as between the lessor and the lessee in view of existing conditions, and as so modified and changed the original lease of February 17, 5 1885, was continued and has continued with other modifications and changes subsequently made (as appears from Exhibit A attached to the petition) until the present time.

Said defendants deny that the Southern Pacific Company acquired the capital stock of the Central Pacific Railway Company or the lease of the properties of that company with the purpose or effect of preventing competition between the lines of said Central Pacific Railway Company and its connections and the lines of the Southern Pacific Company in the transportation of passengers and freight in interstate or foreign commerce.

Said defendants also deny that the control of the Central Pacific Railway Company by the Southern Pacific Company prevents the establishment of a competitive route between San Francisco and Portland.

Said defendants further deny that the Central Pacific Railway Company line from Hazen, Nevada, to Mojave, California, in connection with the line of the Atchison, Topeka & Santa Fe Railway Company, forms a route which would be in natural competition with the Southern Pacific Company and its connections for traffic between points on the Central Pacific Railway Company and its tributary territory and points in Arizona, New Mexico, Texas, and other Southern States; or that through the control of the Central Pacific Railway Company by the Southern Pacific Company the establishment of such joint traffic or prorating arrangements between the former and the Atchison, Topeka & Santa Fe Railway Company is prevented.

The defendants further deny that the ownership by the Southern Pacific Company of the capital stock of the Central Pacific Railway Company, or its lease of the properties of that company, or its domination, management, or control thereof, as set forth in the bill, constitutes a combination in restraint of trade or monopolization thereof in violation of the act of July 2, 1890.

## VI.

Said defendants deny that any object or intent of the Pacific railroad laws was as alleged in Paragraph VI of the petition herein except to the extent that the objects and intent of said Pacific railroad laws are expressed in said laws themselves, to which these defendants make reference.

Said defendants deny that by reason of any alleged interest of the Southern Pacific Company to carry traffic via its Sunset Route, or through the Ogden gateway only such proportion thereof as is unable to control for said Sunset Route it thereby, or otherwise, discriminates against said Central Pacific Railway Company.

Said defendants deny that through its control of the Central Pacific Railway Company the Southern Pacific Company in any way discriminates against the Central Pacific Railway Company; on the contrary, the defendants allege that the lines of said Central Pacific Railway Company are so interconnected with other lines leased by the Southern Pacific Company that there is no natural competition between such lines; that all of said lines form a unified system, developed to meet the needs of the territory served by them; that it would be against the interest of the Southern Pacific Company as lessee of all these lines and the actual owner of the Central Pacific Railway Company to discriminate in any way against the lines of that company; on the contrary, it is to the interest of the Southern Pacific Company that such lines should receive their full development and their full share of the traffic.

Said defendants deny that in its operation of the line of the Central Pacific Railway Company from San Francisco to Ogden it does not give to such line equal advantages and facilities as required by the Pacific railroad laws, but discriminates against both the Central Pacific and the Union Pacific lines and in favor of its Sunset Route by forwarding via the latter traffic originating or ending on the lines of the Central Pacific Railway Company, or in territory tributary thereto; on the contrary, defendants allege that the Southern Pacific Company gives to both the Central Pacific and Union Pacific lines every advantage and facility required by said Pacific railroad laws and that the Union Pacific line has always been made by the Southern Pacific Company its most favored connection at Ogden, Utah.

Said defendants further deny that through its control of the Central Pacific Railway Company, or at all, the Southern Pacific Company prevents joint traffic or prorating arrangements between the Central Pacific and the Union Pacific Railroad Company, or that the Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in the Central Pacific territory south of San Francisco as to discriminate against transportation

eastward over the joint transcontinental route of the Central Pacific and Union Pacific Railroads and other eastern connections, or that thereby, or at all, the Southern Pacific Company prevents competition or denies equal advantages and facilities as to rates, time, and transportation to said Union Pacific Railroad Company.

Said defendants deny that Southern Pacific Company so adjusts its freight rates and passenger fares on traffic originating in Central Pacific territory north of San Francisco as to discriminate against transportation eastward over the joint transcontinental route of the Central Pacific and Union Pacific Railroad and other eastern connections, or that thereby, or at all, it prevents competition or denies equal advantages or facilities as to rates, time, and transportation.

7 Said defendants further deny that the maintenance by the Southern Pacific Company of the Central Pacific Railway Company properties, compared with that of the Sunset Route, is so inefficient as to discourage eastern travel and transportation via the Ogden route and does not afford and secure thereto equal advantages and facilities; on the contrary, the defendants allege that the lines of the Central Pacific Railway Company have always been maintained by the Southern Pacific Company to as high, if not a higher, standard of efficiency as that maintained on the lines of the Sunset Route.

Said defendants further deny that the Southern Pacific Company has heretofore, or does now, control, maintain, or operate said Central Pacific Railway Company in the interest of its Sunset Route or adversely to the interests of the Central Pacific and Union Pacific companies, in violation of the Pacific railroad acts or of any other acts of Congress, or that it does not afford or secure to the Central Pacific and Union Pacific companies equal advantages and facilities as to rates, time, or transportation, or that said Southern Pacific Company is in any way, or at all, violating any of the provisions of the Pacific railroad laws; on the contrary, defendants allege that from the year 1901 to the year 1913 the Union Pacific Railroad Company, through its purchase and ownership of the controlling interest in the capital stock of the Southern Pacific Company, acquired and exercised full and complete domination and control over said Southern Pacific Company and through said Southern Pacific Company over the Central Pacific Railway Company, and that during the said time the Union Pacific Railroad Company had full power to make any joint traffic or prorating arrangements or rate adjustments which were necessary to give the Union Pacific the advantages and facilities as to rates, time, and transportation to which they were entitled. The defendants allege that the joint traffic and prorating arrangements which were sanctioned and enforced during the time of said

Union Pacific control have continued since the termination of said control and are now in existence.

## VII.

The said defendants, for further defense herein, allege that the lines of the Central Pacific Railroad Company and of the Southern Pacific Railroad Company, operated since February 17, 1885, by the Southern Pacific Company, as lessee, constitute the pioneer railroad development of the country west of Ogden, Utah, and El Paso, Texas, and south of Portland, Oregon.

The construction of the main Central Pacific line from Sacramento east to Ogden began in January, 1863, and was completed May 10, 1869.

The construction of the Central Pacific line from Sacramento, via Stockton and Niles, to San Francisco and San Jose was completed in the year 1869.

The construction of the Central Pacific line from Roseville north to the Oregon boundary was begun in October, 1867.

At the Oregon boundary it joined the Oregon and California Railroad, which gave a through line to Portland, Oregon, the operation of which began in December, 1887.

The construction of the Central Pacific line from Lathrop to Goshen was begun November 8, 1870, and completed August 1, 1872. Because of the large indebtedness of the Central Pacific Railroad Company to the United States Government and others, it was difficult to procure funds upon the credit of that company for the construction of the line southward from Goshen.

It became necessary, therefore, in order to procure such funds to organize a new company, and, accordingly, the Southern Pacific Railroad Company was organized, by consolidation, on October 12, 1870, the capital stock of which, or more than three-fourths thereof, was subscribed for and owned by the stockholders of the Central Pacific Railroad Company.

The said Southern Pacific Railroad Company thereafter continued the construction of the line southward from Goshen, making through connection with Los Angeles in September, 1876, and with Yuma, Arizona, October 22, 1877.

Because of the failure of the Texas and Pacific Railroad Company to construct the road contemplated by the act of Congress of March 4, 1871, and the supplementary act of May 2, 1872, the stockholders of the Southern Pacific Railroad Company of California caused to be incorporated the Southern Pacific Railroad Company of Arizona, which continued the construction of said line from Yuma, Arizona, to the eastern boundary thereof; and also caused to be incorporated the

Southern Pacific Railroad Company of New Mexico, which continued the construction of said line eastward through New Mexico to El Paso, Texas.

Said line was opened as a through line between El Paso, Texas, and points in California in May, 1881.

Thereafter the stockholders of said Southern Pacific Railroad Company of California, through corporations organized and controlled by them, secured a line of railroad from El Paso, Texas, to New Orleans, Louisiana, which line of railroad formed an operating connection with the Atchison, Topeka & Santa Fe Railroad Company at Deming, in March, 1881, and with the Texas and Pacific Railroad Company at Sierra Blanca, January 1, 1882.

Said line of railroad was opened as a through line of railroad between New Orleans, Louisiana, and points in California, in February, 1883.

At all times prior to April 1, 1885, the Central Pacific Railroad Company operated its lines of railroad above described, and as rapidly as the main line from Goshen southward to New Orleans, Louisiana, or any part thereof, was opened for operation, this line was leased to the Central Pacific Railroad Company, and that company at all times prior to April 1, 1885, operated said lines in connection with its lines, as lessee.

As stated in the petition, by an instrument dated February 17, 1885, all railroads, equipment, and other properties owned by the Central Pacific Railroad Company, predecessor of the Central Pacific Railway Company, were leased to the Southern Pacific Company for a term of ninety-nine years from April 1, 1885, and all leases of the Southern Pacific Company's properties held by said Central Pacific Railroad were by the same instrument transferred to said Southern Pacific Company.

The Southern Pacific Company at this time became the owner of the entire capital stock of the Southern Pacific Railroad Company of California, of the Southern Pacific Railroad Company of Arizona, and of the Southern Pacific Railroad Company of New Mexico, and also acquired the controlling ownership of the corporations owning the line of railroad between El Paso, Texas, and New Orleans, Louisiana, as above stated.

At all times prior to the date of the lease of the Central Pacific lines and of the Southern Pacific lines to the Southern Pacific Company, the corporations owning said lines were by stock ownership and directorates under a common control and were never in independent or separate ownership; nor were these lines of railroad, or any of them, ever operated in opposition or in competition with any other of said lines; on the contrary, these lines of railroad were built

developed, and operated as a unified system of railroads to answer the needs of the communities served, the companies owning the constituent parts of said lines being controlled by the same stockholders and directorates, to the same degree as if all of said lines had been built and always owned and operated by one company.

Prior to the lease to the Southern Pacific Company all of these lines were operated by the Central Pacific Railroad Company as owner and lessee, as above stated, and since that time all of these lines have been operated by the Southern Pacific Company, as lessee.

Because these lines were in one ownership and management, they were developed as one property, and little heed given as to which corporation should hold the title to terminal properties and branch lines.

Accordingly, branch lines from points on the Central Pacific were built and were owned by the Southern Pacific Railroad Company, these branch lines having no connection with the main line of the Southern Pacific Railroad Company except through Central Pacific lines.

At important points, such as Sacramento, California, most of the title to valuable terminal properties was taken and held in the name of the Central Pacific Railroad Company.

This is also substantially true at Oakland, California; while in San Francisco, California, the Central Pacific Railroad Company has no terminal property.

In the joint operation of these lines through trains have been run by the most direct or convenient line without reference to the ownership of these lines; as, for example, instead of detouring through passenger trains between Ogden and San Francisco, over the Central Pacific line between Sacramento and San Francisco, via Niles, such trains have been operated over the direct line between Sacramento and San Francisco known as the Benicia Cut-Off, owned by the Southern Pacific Railroad Company.

Through trains between Los Angeles and San Francisco have been operated over the Southern Pacific lines from San Francisco to Tracy, over the Central Pacific line from Tracy to Goshen, and over the Southern Pacific lines from Goshen to Los Angeles.

Any separation of the Central Pacific lines from Southern Pacific lines cannot now be had except with great detriment and injury to each of these companies; and in order that these lines should now be operated as separate properties there must be expended very large sums of money to secure separate terminals to complete these properties for operation on a basis independent of each other.

Besides, such separation would necessarily impair public service, through, direct routes could not be used as efficiently or economi-

cally for operation of trains by one company as under present conditions.

The joint ownership, control, and operation of the Central Pacific line under the conditions hereinbefore stated does not in any sense restrain or monopolize trade and commerce in respect to the transportation of persons and property in violation of the act of Congress approved July 2, 1890; nor does such joint ownership, control, and operation in any way violate the provisions of the Pacific railroad laws. On the contrary, the Government of the United States has frequently recognized, as will be hereinafter shown, that such joint ownership, control, and operation was and is, in entire harmony with the laws above mentioned, and in no sense a violation thereof.

### VIII.

Said defendants further allege that at all times the Central Pacific lines and the Southern Pacific lines have been built, extended, controlled, and operated as one property. Such joint ownership, control, and operation existed, therefore, long before the act of July 2, 1890.

By such joint ownership, control, and operation there was never any restraint of trade or commerce between or affecting such lines.

The Central Pacific Railway Company and its predecessor, the Central Pacific Railroad Company, have always fully complied with the provisions of the Pacific railroad laws.

The said Central Pacific line and the Union Pacific line have always been operated as one continuous line, and neither the Central Pacific Railroad Company nor the Central Pacific Railway Company or their officers have refused to operate said line, so far as the public and the Government were concerned, as one continuous line, or have ever refused in such operation or use to afford and give to the Union Pacific Railroad Company equal advantages and facilities as to rates, terms, and transportation without any discrimination of any kind against the said Union Pacific Railroad Company or its business.

### IX.

Said defendants further say that the Government of the United States is estopped by its conduct and is barred by its laches and acquiescence from asserting that the joint ownership and control of the said lines of railroad composing the Southern Pacific system and the operation of the said Central Pacific Railway Company as a part thereof is contrary to its public policy or in violation of the said Pacific railroad acts or the said act of July 2, 1890, and in support of said defenses they show:

Under the said act of July 1, 1862, as amended by the act of July 1, 1864, a subsidy in the form of currency bonds of the United States was granted in aid of the construction of said railroads of the Central Pacific Railroad Company and of the Western Pacific Railroad Company, which bonds bore six per cent interest, payable semi-annually, and matured thirty years after date, and were to be issued upon the completion of sections of twenty miles of railroad and for amounts per mile as stated in the acts.

It was further provided by the act of 1862 that the repayment of said bonds with all interest thereon which might be paid by the United States, should be secured by a first mortgage lien on the railroad and telegraph line, together with the rolling stock, fixtures, etc., in consideration of which the same were issued.

By the act of 1864 the railroad company receiving such aid was permitted to issue first mortgage bonds equal in amount to the subsidy debt, and such first mortgage bonds were given priority of lien over the Government mortgage.

In 1869 the Central Pacific Railroad Company of California completed the construction of its said railroad from Sacramento to a connection with the Union Pacific Railroad at a point five miles west of Ogden, in the State of Utah, being the road it was authorized by the aforesaid act of Congress to construct.

The length of the railroad from Sacramento to the meeting point with the Union Pacific Railroad was seven hundred thirty-seven and fifty-one-hundredths miles, and the subsidy bonds received in consideration thereof from the United States amounted to twenty-five million eight hundred eighty-five thousand one hundred twenty dollars. In 1869, or prior thereto, the Western Pacific Railroad Company completed the construction of its railroad between Sacramento and San Jose, the length of the bond-aided road being one hundred and twenty-three and sixteen one-hundredths miles, and the subsidy bonds received in consideration thereof amounting to one million, nine hundred seventy thousand five hundred and sixty dollars.

The total length of the bond-aided lines was eight hundred and fifty and sixty-six one-hundredths miles, and the aggregate amount of the bonds of the United States received in aid thereof was twenty-seven million eight hundred and fifty-five thousand six hundred and eighty dollars.

These bonds were issued from time to time during the construction of the railroad, and there were issued at about the same time by the Central Pacific Railroad Company of California and by the Western Pacific Railroad Company first mortgage bonds in amount equal to the said subsidy bonds with a superior lien as aforesaid on the said railroad properties.

The average date of the maturity of both sets of bonds was in 1898.

On June 22, 1870, the said Central Pacific Railroad Company of California and the Western Pacific Railroad Company, being both California corporations, were consolidated and merged under the laws of said State into the Central Pacific Railroad Company.

Subsequently, on August 20, 1870, the Central Pacific

13 Railroad was consolidated and merged under the laws of the State of California with the California and Oregon Railroad Company, the San Francisco, Oakland and Alameda Railroad, and the San Joaquin Valley Railroad Company, under the name of the Central Pacific Railroad Company, which was the company that in 1899 was reorganized into the present Central Pacific Railway Company.

Said constituent railroads had constructed and were the owners of the branch lines of railroad from Roseville to the boundary line between California and Oregon; from San Francisco, via Oakland to Niles, and from Lathrop to Goshen, including a branch mileage of about four hundred sixty-seven miles, which branch lines by said consolidation became the property of the Central Pacific Railroad Company.

The said Central Pacific Railroad Company was unable or failed to pay the interest on said subsidy bonds of the United States, as it matured, and the same was paid by the United States; and the amount of said interest and principal due to the United States, as hereinafter more fully set forth, amounted to \$58,812,000.00.

Experience having demonstrated the inadequacy of the provisions contained in the acts of Congress of 1862 and 1864 for the payment of said bonds and interest, Congress adopted the act of May 7, 1878, known as the Thurman Act (20 Stat., 56), which required the reservation of the whole compensation due for services rendered the Government, the creation of a sinking fund, the payment annually of certain sums by the Central Pacific Railroad Company, etc. The requirements of this act were performed by the Central Pacific Railroad Company, but the act failed to accomplish its intended purpose.

The Central Pacific Railroad Company was unable to pay the interest on said subsidy bonds, and it became increasingly evident that it would not be able to pay the interest or principal at the maturity of the debt. Consequently, for several years prior to said maturity, from time to time, the matter was made the subject of inquiry and investigation by both Houses of Congress through the Committees on Pacific Railroads and through special committees appointed for the purpose. The investigation by such committees covered the history of the incorporation and construction of said railroad company and of its different parts, its relations to the Southern Pacific Company and lines of railroad which, with the said C-

acific Railroad Company, composed the Southern Pacific system, the ability of the company to pay said indebtedness, the adequacy of the security which the Government had therefor, and the question whether an extension for the performance of said company's obligations to the Government should be granted, and if so, upon what terms and conditions.

The reports of said committees disclosed fully the relations of the Central Pacific Railroad Company to the Southern Pacific Company, the joint control, ownership, and management which had always existed between the Central Pacific Railroad Company and the other railroads composing said system, as well as the lease of the Central Pacific Railroad Company by the Southern Pacific Company of February 17, 1885, and the various modifications thereof.

The reports also concurred in the statements that the bond-aided lines of the Central Pacific Railroad Company did not reach San Francisco, terminating at Sacramento and San Jose, and did not include the line from Roseville to the Oregon boundary, or from Marysville to Goshen, or the other lines added by consolidation resulting from extensions made without Government aid; and that the security for the Government debt was totally inadequate, and that the only hope of ultimate payment was to extend the time of payment for a long term of years at reduced rates of interest, with provision for periodical payments of such amounts as might be paid from the earnings of the Central Pacific Railroad Company and leave enough for proper maintenance and operation.

Finally, in 1896, the matter of an adjustment of the said indebtedness of the Central Pacific Railroad Company having been referred by the House and Senate to their respective Committees on Pacific Railroads, said committees made their separate reports, that of the House committee being dated April 25, 1896, and that of the Senate committee bearing date May 1, 1896. Both reports were substantially of the same substance and tenor as previous reports, as set forth in preceding paragraph, and both recommended that the Southern Pacific Company be required to participate in the settlement and guarantee the discharge of the Central Pacific Railroad Company's obligations to the Government.

Each committee reported a bill for the extension and ultimate payment of the debt, the bills being practically identical in terms, the fundamental principles of which, in addition to the requirements aforesaid to be made of the Southern Pacific Company, were that the security for the debt should be extended to the nonaided lines and the terminals, and that the Central Pacific Railroad Company should pay fixed sums at prescribed "dates" to reduce the debt rapidly as possible, these payments and rate of interest being made

as large as, in the opinion of each committee, could be met by the reasonably anticipated earnings of the property.

15 The extensions and payments so provided were that, in addition to interest payments, the company was to pay \$365,000.00 per annum on account of principal for ten years from 1898 to 1908; \$550,000 per annum for ten years, from 1908 to 1918, and \$750,000 per annum each year thereafter until the entire debt should be extinguished, which involved an extension of the debt for a period of fifty years or more.

These bills were fully discussed before each House of Congress and failed of passage, and thereafter the Congress of the United States, by an act approved July 7, 1898, passed as an amendment to the general deficiency bill of that session, provided: "That the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads; provided, that any and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding."

Said act further provided that such commission should not agree to accept a less sum in settlement of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise; and provided further that in any settlement that might be made the final payment and full discharge of said indebtedness should not be postponed to exceed ten years, and the whole amount, principal and interest, should be paid in equal semi-annual instalments within the period so limited.

At this time all the material matters and things complained of in the petition as constituting either a violation of the Pacific Railroad laws or of the antitrust act of July 2, 1890, the lease of the Central Pacific Railroad Company to the Southern Pacific Company, the operation of the former as a part of the Southern Pacific system, and the relative location of the lines of railroad composing said system, had long been a matter of public notoriety and of general public knowledge, and had been brought directly within the knowledge of the United States, and especially of the legislative and executive departments thereof, through the reports of said congressional committees and the public debates thereon, as well as by reason of

the relations of said railroads to the Government in connection with said indebtedness as mail carriers and otherwise.

It was well understood by the Congress at the time of the passage of this law that the said indebtedness of the Central Pacific Railroad Company to the United States Government amounted to at least \$58,000,000, and according, therefore, to the terms of said law the Central Pacific Railroad Company was required to pay during each of the ten years allowed for the payment of said debt the sum of \$5,800,000 per annum.

This sum exceeded many times over any possible net earnings of the Central Pacific Railroad Company that could be applied to the payment of this debt, and it cannot be questioned that the Congress intended and understood that this debt could only be paid by the employment of the credit and resources of the Southern Pacific Company, and that compliance with the prescribed terms of settlement necessarily involved participation therein by the Southern Pacific Company, and the only motive or consideration which could induce the said Southern Pacific Company to participate in the payment of the Central Pacific Railroad Company's debt to the Government was the existence of the aforesaid relations between it and that company and its desire to continue such relations and to make permanent its control of that part of its system.

The defendants, therefore, allege that the Congress at the time it enacted said law of July 7, 1898, contemplated and expected such participation by the Southern Pacific Company in the settlement provided for and had this end in view when it appointed said commission with full power to arrange for such security for the payment of said indebtedness as to the said commission might seem expedient.

The commission under the authority above stated entered into an agreement dated February 1, 1899, with the Central Pacific Railroad Company and Messrs. Speyer & Company, bankers of the city of New York; said Speyer & Company representing certain bondholders and stockholders of said Central Pacific Railroad Company in the negotiations leading to the readjustment and payment of the indebtedness of the Central Pacific Railroad Company to the Government, which agreement is annexed hereto and made part hereof, marked Exhibit A.

At the time of the making of this agreement the Central Pacific Railroad Company was insolvent, and without the undertaking of the Southern Pacific Company, hereinafter stated, it would have been impossible for the Central Pacific Railroad Company to have paid its indebtedness to the Government at the times and in the manner specified in the aforesaid agreement.

In order to provide the funds necessary to pay said indebtedness upon the basis of the agreement above stated with the Government, a plan of readjustment was agreed upon by and between the shareholders and bondholders of the Central Pacific Railroad Company and Messrs. Speyer & Company, the readjustment managers, and the Southern Pacific Company.

A memorandum stating such plan of readjustment is attached hereto and made part hereof, marked Exhibit B.

Said settlement agreement with the Government and the above-mentioned readjustment agreements made with the said stockholders and bondholders and the reorganization of the Central Pacific Railroad Company were all parts of one transaction, were interdependent, and had for their common object the carrying out of the said agreement with the Government and the settlement of said indebtedness to the Government.

In accordance with said agreement with the United States Government and said plan of readjustment, said indebtedness of the Central Pacific Railroad Company to the United States Government was fully paid, Southern Pacific Company furnishing the money to pay said indebtedness; and also, as a part of the plan of readjustment, it purchased and became the owner of the entire capital stock of the Central Pacific Railroad Company and also of its successor, the Central Pacific Railway Company, a new company organized in accordance with the agreement with the United States Government and said plan of readjustment.

The members of said commission and the President of the United States were fully advised of all the terms and conditions of said plan of readjustment.

Copies of the agreements upon which said plan of readjustment was based and of said memorandum, Exhibit B, were furnished to the members of said commission and to the President of the United States, and the whole transaction was given the widest publicity in the leading newspapers and financial journals of the United States, so that not only were the private individuals interested in the transaction fully advised, but also the officials of the United States Government, including the members of the Congress of the United States, all of which had full information of the terms and conditions of such readjustment and of the fact that by such plan of readjustment the Southern Pacific Company was to acquire the ownership of the entire capital stock of the Central Pacific Railway Company.

Defendants further allege that the President of the United States and the members of said commission for the settlement of the Central Pacific Railroad Company's aforesaid indebtedness knew, at the time the terms of said settlement agreement were entered into, of the relations between the Central Pacific Railroad Company and the

18 Southern Pacific Railroad Company and the Southern Pacific Company, of the lease of the Central Pacific Railroad Company, of the operation of the Central Pacific lines as a part of the Southern Pacific System, and generally of all the material matters and things now complained of as constituting a violation of either the antitrust act of July 2, 1890, or of the said Pacific railroad laws.

They also knew at the time that the Central Pacific Railroad Company could not, without the aid of the Southern Pacific Company, comply with the terms of said agreement, and they expected, contemplated, and relied upon the participation of the Southern Pacific Company therein and the use of its resources and credit, as was done, to secure compliance with the requirements of said agreement and the ultimate payment of said indebtedness, well knowing that the only inducement or consideration which would move the Southern Pacific Company to so aid in said settlement was its lease of the Central Pacific Railroad Company and its desire to maintain and complete its control of said company as a part of its system of railroads.

By reason of the aforesaid transaction with the United States Government and its duly authorized officials the Southern Pacific Company had the right to believe and rely upon the fact that its relations with the Central Pacific Railroad Company, its lease of the lines and property of said company and its acquisition of the stock of said company were not nor were any of them in violation of the laws or public policy of the United States Government.

In consequence of said acts of the United States Government and the said just expectation and belief on the part of the Southern Pacific Company relating thereto and induced thereby, the Southern Pacific Company incurred the said obligation of the guarantee of the \$100,000,000 of the 1st refunding 4% mortgage bonds of the Central Pacific Railway Company, which are now outstanding; and, in acquiring the \$12,000,000 preferred stock of the Central Pacific Railway Company, subsequently increased to \$17,400,000, and the \$67,775,500 of the common stock of Central Pacific Railway Company, the Southern Pacific Company expended in cash or its equivalent the full par value of said preferred stock and issued in exchange for said common stock an equal amount of its own capital stock and, in addition, \$16,819,000 of its said 4% gold bonds, which stock and bonds are now outstanding; and on the other hand the United States received payment of the said indebtedness of \$58,812,715.48, which would not otherwise have been paid.

As showing the knowledge of Congress of the matters above stated, students refer to the provision contained in the act of Congress

of March 3, 1899 (vol. 30, United States Statutes at Large, page 1245), which reads as follows:

19 "And authority is hereby granted to the Secretary of the Treasury, in his discretion, to dispose of, without commission, at not less than par and accrued interest, any notes or other evidence in his possession touching the indebtedness of the Central Pacific Railroad Company to the United States."

As further showing the knowledge of Congress of the matters above stated, defendants refer to the provision contained in the act of Congress of March 3, 1901 (vol. 31, United States Statutes at Large, page 1023), reading as follows:

"That the Secretary of the Treasury is hereby authorized and directed to make settlement of the claims growing out of Government transportation over nonbond-aided lines of the Southern Pacific Company and Central Pacific Railroad Company by crediting against the notes of the Central Pacific Railroad Company held in the Treasury of the United States interest on all of said judgment and allowed claims at four per centum per annum, as set forth in his letter to the chairman of the Committee on Appropriations of the Senate, dated May twelfth, nineteen hundred."

A copy of said letter of the Secretary of the Treasury as printed by order of Congress, Document No. 227, 56th Congress, 2d session, is annexed hereto and made a part hereof, and marked Exhibit C.

Said Southern Pacific Company, relying on the expectation and belief created and induced by the Government, as aforesaid, has, since said settlement agreement, incurred heavy financial obligations for the benefit of the Central Pacific Railway Company, which it would not otherwise have incurred, and in the construction of extensions and additions to its system of railroads it has done so in such a manner as to greatly increase the losses and the injury to the efficiency and value of its system which will result from the separation therefrom of the lines of railroad standing in the name of the Central Pacific Railway Company, which it would not otherwise have done.

For instance, on March 1, 1911, it unconditionally guaranteed an issue of bonds of the Central Pacific Railway Company, known as that company's 4% thirty-five year European loan of 1911, aggregating 250,000,000 francs, a loan made for the benefit of the Central Pacific Railway Company, and it furnished out of its own treasury the collateral of stocks and bonds by which said loan is secured, and, among other onerous conditions, it agreed that the loan should mature and become exigible if it disposed of the stock of said Central Pacific

Railway Company or if its lease thereof be terminated.

20 And said defendants further allege that by reason of the foregoing facts and circumstances the complainant is estopped from asserting or claiming that the said lease of the Central Pacific

Railway Company to the Southern Pacific Company and the latter's ownership of the stock of the former company, or the control of the one over the other resulting therefrom is in violation either of the Pacific railroad laws or the antitrust act of July 2, 1890, or otherwise contrary to its public policy, and that all objections which could ever have been made by the United States Government to any of said matters have been waived, and that the said United States Government has fully assented thereto and acquiesced therein.

## X.

The said defendants for a further and separate defense herein allege as follows:

On February 1, 1908, the United States of America, as complainant, filed its petition in the United States Circuit Court for the District of Utah, against the Union Pacific Railroad Company, the Southern Pacific Company, and others, in which, among other things, it alleged that the Union Pacific Railroad Company had, in the year 1901, acquired sufficient of the capital stock of the Southern Pacific Company to give it control of that company, and that thereafter, in all respects, the said lines of railway controlled by said corporations, respectively, had been operated as one single entire system.

The aforesaid petition of the Government also stated that the Southern Pacific Company was the owner of the capital stock of the Central Pacific Railroad Company, and that by virtue of said ownership the Southern Pacific Company, in all respects, controlled the operation and management of the affairs and business of said Central Pacific Railroad Company.

It also appeared from said petition that the Central Pacific Railroad Company owned the line of railroad from Sacramento, California to Ogden, Utah.

The principal relief sought by said petition was to free the Central Pacific-Union Pacific transcontinental line and the Southern Pacific "Sunset" line from all restraint of trade and commerce which, it was alleged, had been created by the said defendants or any of them.

While a special prayer for relief was made as against the control of the Southern Pacific Company by the Union Pacific Railroad Company, the Government also in said petition prayed for such other and further relief as the nature of the case might require and to the court seem proper in the premises.

The fact that the Southern Pacific Company exercised complete domination and control over the Central Pacific Railroad Company appeared in said petition and the necessary parties against whom an effective decree could have been entered terminat-

ing such control were before the court; but after joinder of issues and the full taking of testimony as to all these things the trial court entered its decree dismissing the petition and denying the Government any relief whatever.

The Supreme Court of the United States, on appeal, reversed and decree only upon the point that the control of the Southern Pacific Company by the Union Pacific Railroad Company was illegal and in violation of the act of July 2, 1890; but as to all other matters the Supreme Court of the United States said: "We find no reason to disturb the action of the court below", and as to such matters the final decree was against the Government and in favor of the defendants.

And these defendants further allege and say that the decree of the Supreme Court of the United States hereinabove referred to, in connection with the proceedings and action in the court below and in the Supreme Court, was and is a conclusive judgment of the matters in respect to which issue is tendered by the petition herein, and that said decree finally determines by judgment and record estoppel the validity of the aforesaid ownership by the Southern Pacific Company of the said capital stock of the Central Pacific Railway Company.

## XI.

And for another, further, separate, and distinct defense these defendants allege that by the long delay in the assertion of the alleged rights set forth in the petition herein, and by the long forbearance of the petitioner to sue, it was and has been and is guilty of negligence, and the rights of the petitioner and its alleged cause or causes of action set forth in its petition are barred thereby; and the defendants furthermore allege that there was and has been unreasonable delay and laches in the bringing of action for the relief demanded in the petition, and the petitioner's cause or causes of action set forth in its petition are barred thereby.

## XII.

And further answering, these defendants say that by reason of the premises the right to maintain this suit and all right of action or prosecution by the Government of the United States for or on

22 account of the matters and things alleged in the petition accrued, if at all, more than three years and more than five years next before the commencement of this suit, and is, therefore, barred by the statutes of the United States in such cases made and provided, and the right of the petitioner herein is barred by said statutes.

Having thus made full answer to all the matters and things contained in the petition, these defendants pray to be hence dismissed with their costs in this behalf expended.

Wm. F. HERRIN,  
*Solicitor for Defendants*

J. P. BLAIR,  
P. F. DUNNE,  
W. McENERNEY,  
*Of Counsel.*

#### EXHIBIT A.

##### Central Pacific Railroad Company readjustment.

Agreement between the United States of America, the Central Pacific Railroad Company, and Messrs. Speyer & Co., dated February 1, 1899.

Agreement made and entered into the first day of February, 1899, by and between the United States of America, acting by Honorable Lyman J. Gage, Secretary of the Treasury; Honorable Cornelius K. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, appointed by act of Congress approved July 7, 1896, a commission with full power to settle the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, of the first part; the Central Pacific Railroad Company, a corporation created, organized, and existing under the laws of the State of California and of the United States of America, of the second part; and Messrs. Speyer & Company, bankers, of the city of New York, of the third part.

Whereas the Central Pacific Railroad Company, as now existing, is formed by the successive consolidations hereinafter mentioned, it is to say:

- (a) Consolidation of the Central Pacific Railroad Company of California and the Western Pacific Railroad Company into a corporation named the Central Pacific Railroad Company, under articles of association and consolidation dated June 22, 1870.
- (b) Consolidation of the last-mentioned Central Pacific Railroad Company, the California & Oregon Railroad Company, the San Francisco, Oakland & Alameda Railroad Company, and the San Joaquin Valley Railroad Company into a corporation named the Central Pacific Railroad Company, under articles of association and consolidation dated August 20, 1870.

And whereas the said Central Pacific Railroad Company, party of the second part hereto, is the owner of the following lines of railroad, with their appurtenances, which are known as and called the "Bond-aided lines", viz:

A. The line of railroad (about 737 50/100 miles in length), from a point about five miles west of Ogden to Sacramento, to aid in the construction of which bonds were from time to time issued by the United States to the Central Pacific Railroad Company of California to the amount in the aggregate of twenty-five million eight hundred and eighty-five thousand one hundred and twenty dollars (\$25,885,120) under and in pursuance of the provisions of the act of Congress of the United States, entitled

24 "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes", approved July 1, 1862, the act to amend the last-mentioned act, approved July 2, 1864, and the act to amend the above-mentioned acts, approved March 3, 1865.

B. The line of railroad (about 123 14/100 miles in length) from Sacramento to San José, to aid in the construction of which bonds were from time to time issued by the United States to the Western Pacific Railroad Company to the amount in the aggregate of one million nine hundred and seventy thousand five hundred and sixty dollars (\$1,970,560) under and in pursuance of the provisions of the same acts of Congress under which bonds were issued to the Central Pacific Railroad Company of California, as above stated.

And whereas the said Central Pacific Railroad Company is also the owner of the following lines of railroad in the State of California with their appurtenances, which are known as and called the "non-bond-aided lines", viz:

C. The line of railroad (about 24 31/100 miles in length) from Oakland to Niles.

D. The line of railroad (about 146 8/100 miles in length) from Lathrop to Goshen.

E. The line of railroad (about 296 50/100 miles in length) from Roseville to the Oregon boundary;

And whereas the said "bond-aided lines" of railroad are covered by the following mortgages and liens, viz:

First. The bond-aided line from Sacramento to the eastern boundary of California by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barro, trustees, dated July 25, 1865, under which bonds are now outstanding to the amount at their face value of six million three hundred and seventy-eight thousand dollars (\$6,378,000), of which bonds to the

amount of three million and seven thousand dollars (\$3,007,000) are now overdue, and bonds to the amount of three million three hundred and seventy-one thousand dollars (\$3,371,000) will mature December 1, 1899.

Second. The bond-aided line from the eastern boundary of California to a point about five miles west of Ogden by the first mortgage of the Central Pacific Railroad Company of California to D. O. Mills and William E. Barron, trustees, dated January 1, 1867, under which bonds are now outstanding to the amount at their face value of nineteen million five hundred and three thousand dollars (\$19,503,000), of which bonds to the amount of eighty thousand dollars (\$80,000) are now overdue, and bonds to the amount of three million nine hundred and eighty-eight thousand dollars (\$3,988,000) will mature June 1, 1900, and bonds to the amount of fifteen million four hundred and thirty-five thousand dollars (\$15,435,000) will mature June 1, 1901.

Third. The bond-aided line from Sacramento to San José by the first mortgage of the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of one million nine hundred and seventy thousand dollars (\$1,970,000), and will mature July 1, 1899.

Fourth. The bond-aided line from a point about five miles west of Ogden to Sacramento by the statutory lien in favor of the United States under the acts of Congress, approved July 1, 1862, July 2, 1864, and March 3, 1865, above-mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum of \$53,389,052.74), resulting from the issue of bonds to the Central Pacific Railroad Company of California as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said acts subordinate to the lien of the first mortgages of the Central Pacific Railroad Company of California, described in the preceding subdivisions First and Second of this recital.

Fifth. The bond-aided line from Sacramento to San José by the statutory lien in favor of the United States under the acts of Congress approved July 1, 1862, July 2, 1864, and March 3, 1865, above-mentioned, securing the balance of the indebtedness to the United States (amounting as of the date of this agreement, to the sum of \$423,662.74), resulting from the issue of bonds to the Western Pacific Railroad Company as aforesaid to aid in the construction of said bond-aided line, such statutory lien being by said act subordinate to the lien of the first mortgage of the Western Pacific Railroad Company described in the preceding subdivision Third of this recital.

And whereas the said nonbond-aided lines of railroad are covered by the following mortgages and liens, viz:

First. The nonbond-aided line from Oakland to Niles by first mortgage from the Western Pacific Railroad Company to D. O. Mills and William E. Barron, trustees, dated October 28, 1869, under which bonds are now outstanding to the amount at their face value of seven hundred and sixty-five thousand dollars (\$765,000), and will mature July 1, 1899.

Second. The nonbond-aided line from Lathrop to Goshen by first mortgage from the Central Pacific Railroad Company to D. O. Mills and W. C. Ralston, trustees, dated October 1, 1870, under which bonds are now outstanding to the amount at their face value of six million and eighty thousand dollars (\$6,080,000), and will mature October 1, 1900.

Third. The nonbond-aided line from Roseville to the Oregon boundary by first mortgage from the California and Oregon Railroad Company to David S. Dodge and Eugene Kelly, trustees, dated January 1, 1868, and the supplemental mortgage from the Central Pacific Railroad Company as successor of the California and Oregon Railroad Company (by consolidation as aforesaid) to Eugene Kelly and Philo C. Calhoun, trustees, dated January 1, 1872, under which last-mentioned mortgages bonds are now outstanding to the amount at their face value of ten million three hundred and forty thousand dollars (\$10,340,000), the date of maturity of such last-mentioned bonds having been extended to January 1, 1918, by virtue of extension agreements dated September 27, 1887, and September 25, 1891, respectively.

And whereas all the said bond-aided and nonbond-aided lines above referred to are further covered by mortgage from the Central Pacific Railroad Company to the Metropolitan Trust Company of the City of New York, trustee, dated April 1, 1889, under

which there are now outstanding fifty-year five per cent bonds  
26 of said Central Pacific Railroad Company maturing April 1,

1939, to the amount at their face value of twelve million two hundred and eighty-three thousand dollars (\$12,283,000), of which bonds to the amount at their face value of \$2,088,000 are now held by the Metropolitan Trust Company of the City of New York as security for the outstanding land bonds hereinafter mentioned;

And whereas it is claimed by the United States, but not conceded by the other parties hereto, that under and by virtue of the provisions of an act entitled: "An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other pur-

approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act, approved May 7, 1878, the balances of indebtedness to the United States hereinbefore referred to amounting in the aggregate on the date of this agreement to the sum of \$58,812,715.48 are also secured by lien declared in said last-mentioned act upon all the railroad lines above mentioned whether aid or nonaided;

And whereas the lands granted to the Central Pacific Railroad Company of California, by the act of Congress of July 1, 1862, above mentioned, and the lands granted to the California and Oregon Railroad Company by act of Congress approved July 25, 1866, with the exceptions and reservations mentioned in the mortgage hereinafter mentioned, were mortgaged by the Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, by mortgage dated October 1, 1870, to secure an issue of land bonds of the Central Pacific Railroad Company which matured October 1, 1890, a part of which were by extension agreement dated September 4, 1890, extended to October 1, 1900, and of which there are now outstanding bonds to the amount at their face value of \$2,134,000;

And whereas by act of Congress entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for prior years, and for other purposes", approved July 7, 1898, it was among other things provided as follows, viz: "That the Secretary of Treasury, the Secretary of the Interior, and the Attorney General, and their successors in office, be, and they are hereby, appointed a commission with full power to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads, upon such terms and in such manner as may be agreed upon by them, or by a majority of them, and the owners of said railroads: Provided, That all and all settlements thus made shall be submitted in writing to the President for his approval or disapproval, and unless approved by him shall not be binding."

That said commission shall not agree to accept a less sum in payment of the amount due the United States than the full amount of the principal and interest and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise: And also provided, That said commission are hereby empowered to grant such time or times of payment by installment, and at such rates of interest, to be not less than three per centum per annum, payable semiannually, and with such security

as to said commission may seem expedient: Provided, however, That in any settlement that may be made the final payment and full discharge of said indebtedness shall not be postponed to exceed ten years, and the whole amount, principal and interest, shall be paid in equal semiannual installments within the period so limited, and in any settlement made it shall be provided that if default shall be made in any payment of either principal or interest or any part thereof then the whole sum and all installments, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of said settlement: Provided further, That unless the settlement herein authorized be perfected within one year after the passage of this act, the President of the United States shall at once proceed to foreclose all liens now held by the United States against said railroad companies and to collect the indebtedness herein sought to be settled, and nothing in this act contained shall be held to waive or release any right, lien, or cause of action already held by the United States.

"That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty thousand dollars to defray the expenses of said commission in making the said settlement."

And whereas it has been agreed by and between the commission appointed by said act and the owners of the railroads above described, that the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific bond-aided railroads should be settled upon the terms and in the manner hereinafter agreed to, subject to the approval of the President of the United States as provided in said last-mentioned act;

And whereas Messrs. Speyer & Company, from time to time negotiated the sale of large amounts of the bonds secured by mortgage upon the railroads of the Central Pacific Railroad Company above mentioned, and are desirous of cooperating in a settlement of all matters relating to or affecting the indebtedness of said company and the adjustment of its affairs;

And whereas of the first mortgage bonds of the Central Pacific Railroad Company of California secured upon the bond-aided lines above mentioned, and amounting in the aggregate, at their face value to twenty-five million eight hundred and eighty-one thousand dollars (\$25,881,000), there have been already deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount at their face value of twenty-five million six hundred and thirteen thousand dollars (\$25,613,000) under a bond-holders agreement, dated August 14, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas of the Central Pacific Railroad Company's fifty-year five per cent bonds, issued under the mortgage to the Metropolitan Trust Company of the city of New York, dated April 1, 1889, above mentioned, amounting in the aggregate (after deducting said bonds so, as aforesaid, held as security for the said land bonds), to the sum of ten million two hundred and forty-five thousand dollars (\$10,245,000), there have been deposited and still remain on deposit, subject to the order of Messrs. Speyer & Company, bonds to the amount, at their face value, of eight million six hundred and eighty-six thousand dollars (\$8,686,000) under a bondholders agreement, dated October 1, 1897, a copy whereof has been furnished to the party of the first part hereto;

And whereas the owners of the bonds deposited under each of the aforesaid agreements of August 14, 1897, and October 1, 1897, have thereby authorized Messrs. Speyer & Company, in their behalf, to negotiate with any other committees or representatives of holders of the securities of said railroad company, or with the Government of the United States, or otherwise, for participation in respect of the deposited bonds in any plan of readjustment or reorganization, or otherwise;

And whereas there have been deposited with committees consisting of F. G. Banbury, M. P., John B. Akroyd, Lord Alwyne Compton, M. P., Daniel Marks, and Joseph Price, in London, and August Belmont, Hon. John G. Carlisle, and George Coppell, in New York, under agreements, copies of which have been furnished to the party of the first part, certificates of the capital stock of the Central Pacific Railroad Company to the amount, at their face value, of at least thirty-eight million four hundred and one thousand eight hundred dollars (\$38,401,800) out of a total outstanding capital stock of said company amounting, at its par value, to sixty-seven million two hundred and seventy-five thousand five hundred dollars (\$67,275,500), and the said committees have authorized and requested the said Speyer & Company to negotiate, on their behalf, with the commission appointed by the act of Congress of July 7, 1898, above referred to, the basis of a settlement, under and in pursuance of the said act, of the indebtedness to the United States growing out of the issue of bonds in aid of the construction of said Central Pacific and Western Pacific bond-aided railroads above mentioned:

Now, therefore, this agreement witnesseth, That in consideration of the premises the parties hereto have undertaken, covenanted, and agreed, and do hereby undertake, covenant, and agree, to and with each other as follows, that is to say:

That the indebtedness to the United States growing out of the issue of bonds in aid of the construction of the Central Pacific and Western

Pacific bond-aided railroads shall be, and it hereby is, settled upon the terms and in the manner following, that is to say:

First.

The amount due the United States, being the full amount of the principal and interest, and all amounts necessary to reimburse the United States for moneys paid for interest or otherwise, is hereby found and agreed to be, on the day of the date of this agreement, the sum of fifty-eight million eight hundred and twelve thousand seven hundred and fifteen dollars and forty-eight cents (\$58,812,715.48).

Second.

Within thirty days after this settlement shall become binding by the submission thereof in writing to the President and his approval thereof, the Central Pacific Railroad Company shall deliver to the Treasurer of the United States its twenty promissory notes, bearing even date herewith, payable respectively on or before the expiration of each successive six month for ten years, counting from the date of this agreement, each note being for one-twentieth of the foregoing sum of \$58,812,715.48, and bearing interest at the rate of three per cent per annum, payable semiannually.

Provided, however, that if default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable, notwithstanding any other stipulation of this agreement of settlement.

Each of the said notes shall be in the following form, viz:

\$2,940,635.78.

SAN FRANCISCO, CAL., February 1, 1899

On or before \_\_\_\_\_ the Central Pacific Railroad Company will pay to the order of the United States of America two million nine hundred and forty thousand six hundred and thirty-five 78/100 dollars, with interest meantime at the rate of three per cent per annum, payable semiannually, for value received.

This is one of a series of twenty notes given by said railroad company to the United States of America, each for the same principal sum, and bearing interest at the same rate but maturing at different dates—that is to say, on or before the expiration of each successive six months for ten years counting from the date hereof. If default shall be made in any payment of either principal or interest of any of said notes or any part thereof, then all of said notes then out-

standing, principal and interest, shall immediately become due and payable.

### Third.

The payment of the principal and interest of the said notes and the indebtedness represented thereby, shall be secured by the pledge of \$18,820,000, face value, first refunding mortgage four per cent gold bonds issued by the Central Pacific Railroad Company, or its successor company having title to the aforesaid railroads, such bonds to be part of an issue hereinafter described not exceeding \$100,000,000, all, one-twentieth part of such pledged bonds to be held as security for each of said notes.

### Fourth.

The said refunding bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time after this settlement becomes binding, for obtaining the deposit of securities, the assent of security owners, and the carrying out of such plan of reorganization or readjustment as may be necessary to enable the Central Pacific Railroad Company or its successor company to issue said refunding bonds and make the mortgage to secure the same a valid one upon the railroads aforesaid in accordance with the requirements herein expressed. A period of ten months from the delivery of said notes is hereby declared to be *prima facie* such reasonable time, but the Central Pacific Railroad Company agrees to use its best efforts to perfect such mortgage and deliver such bonds before the expiration of that time; and, on the other hand, should the reorganization or readjustment be delayed by the pendency of judicial proceedings for the purpose of enabling the company which is to make the new mortgage to execute and deliver refunding bonds as provided herein or be delayed by adverse litigation, such period is to be correspondingly extended; provided, however, that no period shall not be extended for any cause whatever for more than three years from the date of this agreement except with the written approval of the President of the United States.

If default shall be made in the delivery of the said bonds so to be pledged within the period hereinabove prescribed for such delivery, or, including any extension which there may have been under the foregoing provisions, then the whole amount of the said notes so outstanding, principal and interest, shall immediately become due and payable.

The said first refunding mortgage four per cent gold bonds referred to in article third and this article of this agreement are to run

for at least forty-five years and to bear interest at the rate of four per cent per annum, payable semiannually, and are to be payable, principal and interest, in gold coin of the United States, and are to be a part of an issue not exceeding one hundred million dollars face value secured by mortgage upon all the railroads, equipment, and terminals now owned by the Central Pacific Railroad Company. Such mortgage shall be the first lien upon the said railroads, equipment, and terminals, or shall be secured by deposit as collateral security therefor of at least ninety per cent of the now outstanding first-mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company referred to in paragraphs first, second, and third in the recitals to this agreement describing the mortgages and liens on "bond-aided lines", and of at least seventy-five per cent of the aggregate of all now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first-mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In making such computation as to the amount of deposited bonds, it is agreed that the \$2,038,000 fifty-year five per cent bonds held as security for the outstanding land bonds, as above stated, shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds, dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit of all outstanding bonds now secured thereby as security for the said refunding bonds. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit as security for said refunding bonds of all bonds now secured by that mortgage; provided, that the \$2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be canceled or deposited as security for such refunding bonds.

31 The mortgage securing such refunding bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof, and shall be in the form agreed upon by the parties hereto, and now identified by the signature of the Attorney General of the United States, unless the form thereof should be hereafter modified with the consent of the Attorney General of the United States and the party of the second part, or its successor company, and the party of the third part hereto.

Upon the satisfaction of record of any existing mortgage ~~any~~ securities or funds held in any sinking fund created or existing

under any such mortgage shall be surrendered to the railroad company or its successor company.

The lands granted to the Central Pacific Railroad Company of California and to the California and Oregon Railroad Company, as above stated, are not to be covered by the mortgage securing such refunding bonds. Until the delivery to the Treasurer of the United States of the refunding bonds to be pledged to it under article third hereof, secured as aforesaid, all rights of the United States in respect to said granted lands shall remain in full force and effect, but shall not be enforced unless the Central Pacific Railroad Company, or its successor company, shall make default under this agreement; and upon such delivery of said refunding bonds, secured as aforesaid, all rights, interest, and claims of the United States in, to, and in respect to, such lands shall cease and determine.

From time to time, as the principal or any part of the principal of said notes shall be paid, the United States or other holders of said notes shall return to said railroad company or its successors an equal amount at their face value of the said refunding bonds with all unmatured coupons appertaining thereto; and, as interest shall be paid upon said notes, the United States or other holders of said notes shall detach and return to said railroad company or its successors the coupons appertaining to said bonds representing interest thereon to the date to which interest shall have been paid upon said notes, which coupons shall thereupon be forthwith canceled.

### Fifth.

Until the refunding bonds hereinbefore provided for, secured as aforesaid, shall have been delivered to the Treasurer of the United States as security for the said notes, the lien in favor of the United States, reserved in the acts of Congress above mentioned to secure the repayment to the United States of the above-mentioned indebtedness, as such lien now exists, shall remain in full force and effect to the extent of such indebtedness as security for the notes representing such indebtedness; and nothing herein contained shall be deemed to prevent the United States from intervening for the protection of its said lien in any legal proceedings brought to foreclose any lien on said railroads or any part thereof or otherwise.

When the Central Pacific Railroad Company or its successor company shall have delivered to the Treasurer of the United States said refunding bonds, secured as aforesaid then the lien in favor of the

United States above referred to, as then existing, shall immediately vest in, and it is hereby, upon the happening of that event, transferred, to the trustee of the mortgage securing such refunding bonds as security for the entire issue of such bonds.

## Sixth.

Until the notes to be given by the Central Pacific Railroad Company under article second of this agreement shall have been paid in full, principal and interest, all amounts due to the Central Pacific Railroad Company, or its successor company, from the United States subsequent to the date of this agreement in respect of services to the United States, upon the bond-aided lines from a point about five miles west of Ogden to Sacramento and from Sacramento to San Jose, above referred to, shall, as audited and allowed, be applied by the United States pro rata on account of the amounts remaining unpaid on such of said notes as shall not have been purchased by Messrs. Speyer & Co. hereunder, such application being first made to the payment of accrued interest thereon and thereafter on account of the principal thereof.

## Seventh.

Messrs. Speyer & Company, within one month after the delivery to the United States of the notes referred to in article second hereof, will, against delivery to them of the four earliest maturing notes, endorsed to their order by the Secretary of the Treasury on behalf of the United States without recourse to it, pay to the United States the face value of such notes, viz: Eleven million seven hundred and sixty-two thousand five hundred and forty-three dollars and twelve cents (\$11,762,543.12), with accrued interest thereon to date of payment. From and after the time when such payment shall have been made by Messrs. Speyer & Company they shall, until the delivery of such refunding bonds, be entitled to share pro rata with the United States in the lien and all proceeds of the lien in favor of the United States to secure the indebtedness above referred to. Upon delivery of the said refunding bonds, Messrs. Speyer & Company shall be entitled to receive such bonds to the amount, at their face value, of the principal of said notes then remaining unpaid which are then held by said Speyer & Company.

Within ten days after the maturity of each of said notes held by Messrs. Speyer & Company, the said Speyer & Company shall notify the Secretary of the Treasury of the United States whether such matured note and the matured interest on all the notes held by them have been paid to them or not.

Until the refunding bonds hereinbefore provided for secured as aforesaid shall have been delivered to the Treasurer of the United States as security for the said notes, all rights of the United States in or to or in respect of the said lien, and in or to or in respect of the lands granted as aforesaid, shall remain unaffected by the trans-

for the said notes to Speyer and Company, and all right and title of the United States in the said lien, and in respect of the said lands, shall be deemed to continue in the United States as fully as if the said notes remained in its possession and ownership, save only that the said right and title shall be deemed to be held by the United States for the pro rata benefit of itself and said Speyer and Company, and the United States may bring and maintain any and all actions, suits, and proceedings which it might have brought or maintained, and may do any and all acts and things which it might have done had all the said notes remained in its possession and ownership, provided that all recoveries, benefits, and advantages derived or obtained through or by means of such actions, suits, proceedings, and acts for the enforcement of such rights, shall inure to the pro rata benefit of the United States and said Speyer and Company. In case of any default in payment of the principal or interest of any of said notes, the United States will thereupon proceed for the enforcement of the said lien.

In witness whereof this agreement has been executed on behalf of the United States of America by Honorable Lyman J. Gage, Secretary of the Treasury, Honorable Cornelius N. Bliss, Secretary of the Interior, and Honorable John W. Griggs, Attorney General, appointed by the act of Congress a commission as hereabove stated; by the Central Pacific Railroad Company by its president and under its corporate seal attested by its secretary; and by Messrs. Speyer & Company under their hands the day and year first above written, executed in triplicate.

LYMAN J. GAGE,  
*Secretary of the Treasury.*

CORNELIUS N. BLISS,  
*Secretary of the Interior.*

JOHN W. GRIGGS,  
*Attorney General.*

Approved:

WILLIAM MCKINLEY.

CENTRAL PACIFIC RAILROAD COMPANY,  
By ISAAC L. REQUA, *President.*

(Central Pacific Railroad Company seal.)

Attest:

W. M. THOMPSON,  
*Secretary.*

SPEYER & CO.

## Central Pacific Railroad Company plan of readjustment.

## Conditions of participation.

Participation under this plan of readjustment in any respect whatsoever is dependent upon the deposit of securities with Speyer & Co., of New York, the depositary named in the readjustment agreement, either at their office, No. 30 Broad Street, in the city of New York, or at the offices of Speyer Brothers, London; Laz. Speyer Ellissen, Frankfort o/Main; Teixeira de Mattos Brothers, Amsterdam, and the Deutsche Bank, Berlin, acting as agents for the depositary under this plan. The plan will embrace only securities so deposited within such time as may be fixed by notice. No securities will be received on deposit unless in negotiable form, and bonds must carry all coupons maturing after February 1, 1899. The word securities whenever used in this plan shall include stocks as well as bonds and coupons.

Pursuant to the offer of the syndicate hereinafter mentioned, holders of the common stock of the Central Pacific Railroad Company may purchase from the syndicate the new common stock, or become entitled to receive the other benefits accruing to depositors of the present common stock under the plan, by depositing their old stock with Messrs. Speyer & Co. or the firms acting as their agents in Europe for that purpose on the following terms: As consideration for shares of the new company, or such other securities and benefits as may be provided in lieu thereof, the depositors of common stock must pay \$2.00 per share deposited, and will thereupon be entitled, on the completion of the readjustment, to receive \$100 in new common stock or such other securities and benefits as may be provided in lieu thereof.

The payments by depositors of such common stock must be made for account of the syndicate at the offices of Speyer & Co., in New York, or the firms acting as their agents in Europe for that purpose, when and as called for by advertisement published at least twice a week for two successive weeks in at least two of the daily newspapers of general circulation published in the cities of New York, London, Frankfort o/Main, Amsterdam, and Berlin, respectively. All payments must be receipted for by or on behalf of the depositary on the certificates of deposit. Failure to make such payment when and as payable will subject the deposited stock and all rights therein, or in respect thereof, to forfeiture to the syndicate as provided in the readjustment agreement.

The depository will issue proper receipts or certificates of deposit for all securities deposited. Deposited securities will be placed with the Central Trust Company of New York, or its agents in Europe, as custodian.

The following bonds and stock may be deposited on the terms hereinafter provided:

Central Pacific Railroad Company of California first mortgage bonds, series A, B, C, D, E, F, G, H, and I.

Western Pacific Railroad Company first mortgage bonds, series A and B.

California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B.

Central Pacific Railroad Company (San Joaquin Valley Branch) first mortgage bonds.

Central Pacific Railroad Company land bonds.

Central Pacific Railroad Company fifty-year six per cent bonds.

Central Pacific Railroad Company fifty-year five per cent bonds.

Central Pacific Railroad Company common stock.

#### New railroad company.

Unless the readjustment managers shall decide to proceed without foreclosure or sale, the various properties will be sold under foreclosure of one or more of the existing mortgages, or otherwise dealt with, and a successor company or companies will be organized. The term "new company", as hereinafter used, is intended to mean either the existing company or the new proprietary company or companies which may be organized.

#### Deposited securities.

The securities deposited hereunder will be held by the depository subject to the order and control of the readjustment managers as provided in the readjustment agreement.

All securities deposited under the plan are to be kept alive so long as deemed necessary by the readjustment managers for the purposes of readjustment or the protection of the new company or its security holders.

Interest from the respective due dates of the last matured coupons prior to February 1, 1899, at the same rates, will be paid in cash, upon the completion of the readjustment, on all deposited bonds up to August 1, 1899.

The readjustment managers may collect from the railroad company my interest on deposited bonds, and at their option may pay over the amounts so collected, or any part thereof, to the holders of the

certificates of deposit for such bonds. In case such payments are made, the certificates of deposit will be stamped accordingly.

The syndicate has agreed to purchase for cash, when and so soon as the plan is declared operative, all of the following existing bonds at the prices stated:

At the price of par and accrued interest in New York:

Central Pacific Railroad Company, of California, first mortgage bonds, series A, B, C, D, E, F, G, H, and I-----	\$25,881,000
Western Pacific Railroad Company first mortgage bonds, series A and B-----	2,735,000
Central Pacific Railroad Company (San Joaquin Valley Branch) first mortgage bonds-----	6,080,000
Central Pacific Railroad Company land bonds-----	2,134,000
86 At the price of 105 and accrued interest in New York:	
Central Pacific Railroad Company fifty-year six per cent bonds-----	55,000
Central Pacific Railroad Company fifty-year five per cent bonds-----	10,245,000

At the price of 100 and accrued interest in New York:

California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B-----	10,340,000
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Holders of above bonds who prefer to accept cash rather than to take the new securities provided in the plan must signify their election to take cash when depositing their securities, within such time as may be fixed by notice, by having their certificates of deposit stamped accordingly by the depositary or any of the firms acting as their agents in Europe, above mentioned, and will thereupon be entitled to receive the said cash payment therefor at the time that the plan is declared operative, and upon surrender of the certificate of deposit so stamped.

#### Settlement with United States Government.

The company has entered into an agreement, dated February 1, 1899, with the United States Government and with Messrs. Speyer & Co. which provides in substance as follows:

The balance of the indebtedness due to the United States as of February 1, 1899, amounted, principal and interest, to \$58,812,715.48. The agreement provides for the payment by the railroad company or its successor of the whole of this indebtedness within ten years in equal semi-annual installments, with interest meanwhile at the rate of three per cent per annum, payable semi-annually. These payments are to be evidenced by twenty notes of the railroad company, falling due, one every six months beginning August 1, 1899, which are to be delivered within thirty days after said agreement of settlement becomes effective, and are to be secured by an equal amount in face value of the new first refunding mortgage four per cent gold bonds hereinafter described, which bonds are to be delivered to

United States, as provided in said agreement, as soon as practicable after delivery of said notes. In case of default in payment of interest or principal of any of said notes, or of failure to deliver the first refunding mortgage four per cent gold bonds within the time limited in said agreement of settlement, the whole amount of said notes then outstanding will become immediately due and payable. Messrs. Speyer & Co. have agreed to purchase the \$11,762,548.12 of said notes earliest maturing, so that the amount of said first refunding mortgage four per cent gold bonds to be retained as collateral by the United States will be \$47,056,000, par value, thereof.

#### New stocks and bonds.

The new company is to authorize the following securities:

##### First.

\$100,000,000 first refunding mortgage four per cent gold bonds, to run not less than forty-five years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads, terminals, and equipment (see Table A, page 10) now owned by the Central Pacific Railroad Company, covering about 1,349 miles of first track and about 365 miles of second track and sidings, or shall be secured by deposit as collateral security therefor of at least ninety per cent of the present outstanding first mortgage bonds of the Central Pacific Railroad Company of California, and the Western Pacific Railroad Company above mentioned, and of at least seventy-five per cent of the aggregate of all the now outstanding bonds of the Central Pacific Railroad Company and of all now outstanding bonds of the divisional companies by the consolidation whereof it was formed, including such first mortgage bonds of the Central Pacific Railroad Company of California and Western Pacific Railroad Company. In computing the amount of deposited bonds, the \$2,038,000 fifty-year bonds held as security for the outstanding land bonds shall not be counted as outstanding bonds. If any of the mortgages now securing any of the outstanding bonds aforesaid (other than the mortgage securing the land bonds dated October 1, 1870, above referred to) shall be satisfied and discharged, such satisfaction and discharge thereof shall be deemed to be the equivalent of the deposit, security for the said refunding bonds, of all outstanding bonds now secured by the mortgage so satisfied and discharged. The satisfaction and discharge of the said mortgage securing the land bonds, dated October 1, 1870, shall be deemed to be the equivalent of the deposit, security for said refunding bonds of all bonds now secured

by that mortgage, provided that the \$2,038,000 fifty-year five per cent bonds held as security for such land bonds shall either be canceled or deposited as security for such refunding bonds.

\$47,056,000 of these bonds will be retained by the United States Government as collateral security for the \$47,050,172.48 of the 3 per cent notes of the Central Pacific Railroad Company above mentioned remaining in its possession. As these notes are paid, an equivalent amount of these bonds will be returned to the railroad company, and the mortgage will provide that they may then be reissued at the same or a lower rate of interest if the railroad company shall deem it expedient. In no event is the total amount of bonds outstanding at any one time under this mortgage to exceed \$100,000,000, and a sufficient amount of bonds will be reserved to take up underlying bonds as provided in this plan, page 7.

The first refunding mortgage bonds are to be applied as follows:

To be retained by the United States Government as collateral for three per cent notes-----	\$47,056,000
In partial exchange for existing bonds (see page 7)-----	51,233,500
Purchased by syndicate to provide cash requirements of plan (see page 8)-----	1,000,000

38

Second.

\$25,000,000 three and one-half per cent mortgage gold bonds, to run thirty years.

These bonds will bear interest from August 1, 1899, free of taxes, and are to be secured by a mortgage upon all the railroads and properties covered by the first refunding mortgage above mentioned (subject, however, to the prior lien of such first refunding mortgage), and also by deposit with the trustee under such mortgage, as acquired, of all securities and moneys now or hereafter held in any sinking fund created or existing by or under any now existing mortgage of the present Central Pacific Railroad Company or any divisional railroad company by the consolidation whereof it was formed (see Table B, page 11); and to be also secured by a trust deed upon all the lands now covered by the mortgage, securing the land bonds of the present Central Pacific Railroad Company, dated October 1, 1870 (except in so far as the same shall be released from the lien of said last-mentioned mortgage in accordance with its provisions before such mortgage is satisfied and discharged); and also upon all notes given in payment for lands covered by such mortgage securing said land bonds which shall be outstanding at the time when such last-mentioned mortgage is satisfied and discharged (see Table C, page 12). All income derived from said sinking fund securities

on said lands is to be applied primarily to the payment of the current interest on said three and one-half per cent mortgage gold bonds, and after such current interest shall have been paid or provided for, to the payment of any fixed charges of the railroad company which may be secured by lien, prior to the lien of said three and one-half per cent mortgage, upon its properties or any of them (including interest on the said three per cent notes in favor of the United States above mentioned); but the railroad company, at its discretion, so long as no default exists in respect to principal or interest on said three and one-half per cent mortgage gold bonds, may at any time, or from time to time, sell such securities or lands and apply the proceeds thereof, or any moneys held as security for such three and one-half per cent gold bonds (other than the income above referred to), to the purchase and cancellation of said three and one-half per cent mortgage gold bonds while the same shall be purchasable at not above par and accrued interest; otherwise, to the purchase and cancellation, at the discretion of the railroad company, either of the three and one-half per cent mortgage gold bonds or of the first refunding mortgage four per cent gold bonds or of bonds secured by prior liens upon its properties. All proceeds of or collections of notes given in payment for lands covered by the mortgage bearing the land bonds of the Central Pacific Railroad Company, dated October 1, 1870, which may remain unpaid at the time of the satisfaction or discharge of said mortgage securing said land bonds, to be applied in the same manner as above provided in respect to the proceeds of sinking-fund securities and lands. Suitable provision will be made that no other new mortgage (except to refund such refunding mortgage four per cent gold bonds or said three and one-half per cent mortgage gold bonds) is to be made upon the properties covered by the mortgage securing said first refunding mortgage four per cent gold bonds, or said three and one-half per cent mortgage gold bonds, so long as any of such bonds of either class or any of the four per cent gold bonds of the Southern Pacific Company, hereinafter referred to, are outstanding; that no other new mortgage is to be made by the railroad company upon said properties except with the assent of the holders of twenty-five per cent of the preferred stock and a majority of the common stock at the time outstanding.

The three and one-half per cent mortgage gold bonds are to be paid as follows:

partial exchange for existing bonds (see page 7) -----	\$13,695,000
closed by syndicate to provide cash requirements of plan (see page 8) -----	11,305,000
	<hr/>
	\$25,000,000

## Third.

\$20,000,000 four per cent cumulative preferred stock.

This stock will be entitled to cumulative dividends up to 4 per cent per annum, gold, payable semiannually, beginning from August 1, 1899, before payment of any dividend on the common stock. Thereafter dividends up to 4 per cent per annum to be paid on the common stock and the balance of dividends to be paid pro rata upon preferred and common stock. The preferred stock will be preferred as to capital towards the common stock on any liquidation or dissolution of the company.

Suitable provision is to be made that no additional mortgage shall be put upon the property to be acquired by the new company hereunder and that no increase in the amount of the preferred stock authorized under this plan shall be made except in each instance after obtaining the consent of the holders of 75 per cent of the whole amount of preferred stock and a majority of the whole amount of common stock at the time outstanding.

This preferred stock will be applied as follows:

To Southern Pacific Company in consideration of the issue of an equal amount at par value of the Southern Pacific Company's four per cent gold bonds hereinafter mentioned, such bonds after providing for requirements of the readjustment, to be applied only to betterments and additions to the railroad company's properties	\$12,000,000
To Southern Pacific Company in consideration of the issue of an equal amount at par value of its said four per cent gold bonds, to be used to provide additional funds, if required, for the payment of said three per cent notes to the United States, and thereafter to be applied only for betterments and additions to the railroad company's properties	3,000,000
Reserved to be issued from time to time to an equal amount at par value in consideration of the issue of \$5,000,000 of said Southern Pacific Company's four per cent gold bonds for betterments and additions to the railroad company's properties (such bonds to be issued at the rate of not exceeding \$200,000 par value thereof per annum)	5,000,000
	\$20,000,000

## Fourth.

\$67,275,500 common stock.

This stock will be applied as follows:

Sold to syndicate and offered for sale to depositors of present common stock (see page 1)	\$67,275,500
Pursuant to an agreement made between the Central Pacific R.R. Co., London shareholders' committee, the readjustment manager	

the Southern Pacific Company, that company has offered to purchase all of the existing common stock deposited under the plan or new common stock which the readjustment managers shall be authorized to sell as herein provided upon substantially the following terms:

The holders of certificates of deposit for existing common stock of the railroad company, who shall make the cash payment of \$2.00 per share deposited as hereinbefore provided, to receive, in exchange for their stock, common stock of the Southern Pacific Company, one for share, and also twenty-five per cent of the par value of their stock in the new four per cent gold bonds of the Southern Pacific Company, to be secured by a collateral trust mortgage as stated below.

Unless stockholders at the time of depositing their stock certificates shall notify the depositary of their election not to sell their deposited stock, or the new common stock to be issued therefor, to the Southern Pacific Company upon the terms above stated, and shall at the same time have their readjustment certificates of deposit stamped "non-assented", such depositing holders will be deemed to have authorized the sale of their stock to the Southern Pacific Company upon said terms, and such deposited stock or the corresponding stock when issued, will accordingly be delivered to the Southern Pacific Company in exchange for the above-named securities to be paid as the purchase price thereof.

In case the readjustment managers shall determine to proceed by foreclosure, the new common stock will not be issued, but the existing common stock deposited under the plan (excepting stock presented by certificates of deposit stamped "non-assented") will be sold to the Southern Pacific Company upon the terms above mentioned, and the holders of certificates of deposit therefor who shall make the cash payment in respect thereof, as hereinbefore provided, shall be entitled to receive the new securities to be paid by the Southern Pacific Company as the purchase price thereof.

Copies of the said agreement with the Southern Pacific Company may be obtained at the office of the depositary or any of the managers.

#### Agreement and guarantees of the Southern Pacific Company.

Under the said agreement the Southern Pacific Company agrees it will, at the time and in the manner therein provided, issue its four per cent gold bonds (aggregating \$36,819,000 face value) as follows:

Such four per cent gold bonds shall bear interest at the rate of four per cent per annum from August 1, 1899, free of taxes, and fifty years to run (but subject to redemption at any time, at

the option of the Southern Pacific Company, at par and accrued interest, upon six months' notice by publication). Such bonds shall be issued only to the following amounts:

In part payment of the purchase price under the plan of the common stock of the railroad company, being one-fourth of the par value thereof-----	\$16,819,600
In consideration of the issue of the new preferred stock of the railroad company as above stated-----	15,000,000
Reserve to be issued only for betterments or additions to the railroad company's properties at the rate of not exceeding \$200,000 par value thereof per annum, against the issue of an equal amount at par value of the new preferred stock-----	5,000,000
	\$36,819,600

The said four per cent gold bonds are to be secured by a collateral trust mortgage covering the \$12,000,000 of new preferred stock presently issued, and the additional \$8,000,000 of such preferred stock as and when the same shall be issued and delivered; and, also, all the common stock of the railroad company, purchased by the Southern Pacific Company. Said collateral trust mortgage shall contain suitable provisions for the protection of the holders of bonds secured thereby, and shall authorize the trustee under said mortgage to sell the stocks of the railroad company covered thereby in case of six months' default in payment of the principal or interest of said four per cent bonds of the Southern Pacific Company. Suitable provisions will also be made that so long as any of said four per cent gold bonds of the Southern Pacific Company remain outstanding neither the preferred nor common stock of the railroad company shall be increased beyond the amounts hereinbefore mentioned respectively, unless arrangements have been made for depositing under said collateral trust mortgage the same proportionate part of such increase of each class of stock as the stock of such class theretofore covered by such mortgage was of the whole outstanding stock of such class as the same existed before such increase; and also that the said railroad company shall not be merged or consolidated with any other railroad company without the consent of the holders of the majority in amount of such four per cent gold bonds of the Southern Pacific Company then outstanding.

The Southern Pacific Company further agrees that upon delivery to it of said \$12,000,000 of new preferred stock, and at least 377,194 shares of the common stock of the railroad company, it will simultaneously, by appropriate written instruments endorsed thereon, guarantee unconditionally the payment of the principal and interest, as they shall severally mature, of the first refunding mortgage four per cent

gold bonds at the rate of four per cent per annum, and of the three and one-half per cent mortgage gold bonds at the rate of three and one-half per cent per annum, payable in gold, free of taxes, beginning from August 1, 1899.

#### Application of new securities.

It is contemplated that, as a consideration for the property and securities to be conveyed and delivered to the new company, or which it shall acquire pursuant to the plan, it shall deliver the new bonds and stock, excepting such final amounts as shall be reserved for the future use of the new company and such amounts as are deliverable directly to the United States Government as hereinbefore provided. The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

The following details show the disposition to be made under the plan of the securities of the new company:

*Note showing amount of cash and new securities which deposited securities will be entitled to receive on completion of readjustment.*

Existing bonds and stock to be deposited.	Each \$1,000 receives—		
	Cash.*	New 4% first refunding mortgage gold bonds.	New 3½% mortgage gold bonds.
Central Pacific Railroad Company of California first mortgage bonds:			
Series A.....	\$33.33	\$1,000	\$50
Series B, C, D, E, F, G, H, and I.....	29.17	1,000	50
Central Pacific Railroad Company first mortgage bonds, series A and B.....	35.00	1,000	50
Central Pacific Railroad Company (San Joaquin Valley branch) first mortgage bonds.....	50.00	1,000	75
Central Pacific Railroad Company land bonds.....	41.67	500	700
Central Pacific Railroad Company fifty-year 6% bonds.....	50.00	500	900
Central Pacific Railroad Company fifty-year 5½% bonds.....	41.67	500	800
California and Oregon Railroad Company and Central Pacific Railroad Company, successor, first mortgage bonds, series A and B....	29.17	1,000	200

\*Interest from the due dates of the last coupons matured prior to February 1, 1899, at the same rates up to the date when the new bonds begin to bear interest—namely, August 1, 1899.

Holders of certificates of deposit for Central Pacific common stock (not stamped "Nonassented"), on payment of \$2 per share deposited, will be entitled to receive for each \$100 share deposited:

Southern Pacific Company's stock.....	\$100
Southern Pacific Company's four per cent gold bond, bearing interest from August 1, 1899.....	25

## 43 Estimated cash requirements and provision therefor.

For payment of four 3% notes maturing as follows:

\$2,940,635.78 on August 1, 1899; \$2,940,635.78 on February 1, 1900; \$2,940,635.78 on August 1, 1900; \$2,940,635.78 on February 1, 1901.----- \$11,762,543.12

For new equipment, improvements, and other purposes of the new company, including also expenses of the readjustment, commission to syndicate, compensation of the readjustment managers in the formation of the syndicate, etc., any surplus to new company----- 9,657,500.00

\$21,420,100.00

To meet these requirements the syndicate will contribute by the purchase of new securities to be issued under the plan and the agreement with the Southern Pacific Company----- \$21,420,100.00

## Syndicate.

A syndicate has been formed by Messrs. Speyer & Co., of New York, Messrs. Speyer Brothers, of London, Mr. Laz. Speyer Ellissen of Frankfort o/M., Messrs. Teixeira de Mattos Brothers, of Amsterdam, and the Deutsche Bank, of Berlin, which will be conducted by the first named firm as syndicate managers, and which agrees:

(1) To purchase \$11,762,543.12 of the Central Pacific Railroad Company's 3% notes to be given in settlement of claim of United States as above stated.

(2) To purchase \$67,275,500 of the new common stock, and to offer the same for sale to depositing holders of the present common stock of the Central Pacific Railroad Company, as stated on page 1.

(3) To purchase \$1,690,500 of the first refunding mortgage four per cent gold bonds, \$11,305,000 of the three and one-half per cent mortgage gold bonds, and \$12,000,000 of the new Southern Pacific four per cent gold bonds.

(4) To buy the outstanding bonds of holders who assent to the plan, and while depositing their securities prefer to take cash rather than the new securities, as stated on page 2.

(5) To make advances and perform other obligations essential for the purposes of the plan.

## Position of the new company.

The annual fixed charges after readjustment and after the payment of all the notes given to the United States Government as proposed, it is estimated, will be not over----- \$4,875,000.

44 The average net earnings, after payment of taxes, rentals, and all other expenses, for the 10½ years ending June 30, 1898, were, including miscellaneous income (see Table D, page 13)----- \$4,893,259.17

All present annual income from sinking fund securities (as reported by the company, see Table B, page 11)-----	\$680,680.00
	<u><u>\$5,582,989.17</u></u>

It thus appears that the fixed charges of the new company on completion of the readjustment will be well within the past net income of the property.

The above statement of fixed charges does not take into account the saving in annual interest during the ten years ending August 1, 1900, during which time the company will only have to pay three per cent interest on the balance of the notes given for its debt to the United States Government and remaining unpaid from time to time, while the first refunding mortgage bonds deposited as security therefor carry interest at four per cent.

It is estimated that under the readjustment upwards of \$4,500,000 will be provided, which will be immediately available for improvements on the properties of the railroad company.

Dated February 8, 1899.

TABLE A.—*Rolling stock.*

Locomotives-----	304
Baggage, mail and express, passenger, dining, and business cars-----	308
Sleeping and tourist cars in which the company has three-fourths interest-----	33
Flat cars of all classes-----	5,036
Freight and working cars-----	204

Floating equipment.

Passenger ferry steamers: Amador, 985 tons; El Capitan, 982 tons; Island, 1,672 tons; Piedmont, 1,854 tons.

Car transfer steamers: Transit, 1,566 tons; Thoroughfare, 1,012 tons.

River steamers: Apache, 938 tons; Modoc, 930 tons.

Tug: Rival, 26 tons.

February 8, 1899.

[Seal Central Pac. R. R. Co.]

CHARLES BABBIDGE,  
*Assistant Secretary.*

TABLE B.—*Statement of Central Pacific Railroad Company sinking funds.*

Nos. 3, 4, 5, 6, and 9.

San and Northwestern Railway Company five per cent bonds-----	\$300,000.00
St. Louis and San Francisco Railway Company six per cent bonds-----	548,000.00
St. Louis, Harrisburg and San Antonio Railway Company five per cent bonds-----	1,024,000.00

Guatemala Central Railroad Company six per cent bonds.....	\$1,738,000.00
Iberia and Vermillion Railroad Company five per cent bonds.....	322,000.00
Morgan's La. and Texas R. R. & S. S. Co. five per cent bonds.....	1,000,000.00
Northern California Railway Company five per cent bonds.....	600,000.00
Oregon and California Railroad Company five per cent bonds.....	400,000.00
San Antonio and Arkansas Pass Railway Company four per cent bonds.....	600,000.00
Central Pacific Railroad Company six per cent bonds (San Joaquin Valley Division).....	2,000.00
Southern Pacific R. R. Co. (of Cal.) five per cent bonds.....	1,262,000.00
Southern Pacific R. R. Co. (of N. M.) six per cent bonds.....	2,035,000.00
Southern Pacific Company Steamship six per cent bonds.....	2,420,000.00
Western Pacific Railroad Company six per cent bonds.....	1,000.00

## No. 10.

Central Pacific Railroad Company fifty-year five per cent bonds of 1839 .....	177,000.00
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## No. 11.

California and Oregon Railroad Company five per cent bonds, series A .....	15,000.00
Central Pacific Railroad Company, successor to California and Oregon R. R. Co., series B, five per cent bonds.....	50,000.00

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## Cash uninvested.

Nos. 3, 4, 5, 6, and 9.....	\$13,000.00
No. 10.....	59,154.00
No. 11.....	18,614.00

Total.....

\$38,458.75

Present annual income from above investments.....

\$890,000.00

[Seal Central Pac. R. R. Co.]

CHARLES BABBIDGE,  
Assistant Secretary.TABLE C.—Central Pacific Railroad Company—Statement of land-grant account  
February 1, 1899.

Partial payments on account of land contracts on which final payment has not been made.....	\$135,100.00
Unpaid principal of deferred payments.....	658,005.00
Total.....	\$824,205.00

The number of acres of land remaining unsold February 1, 1899, as correctly as this can be ascertained, approximate about 7,370,000 acres.

February 8, 1899.

[Seal Central Pac. R. R. Co.]

CHARLES BABBIDGE,  
Assistant Secretary.

EXHIBIT D.—*Central Pacific Railroad Co.—Statement of earnings and operating expenses.*

	Gross earnings from operation (including rentals).	Expenses of operation * (including taxes and rentals).	Net earnings from operation.
For ending 30th June, 1898.....	\$15,504,309.60	\$9,846,276.87	\$5,658,032.73
Monthly average for 10½ years ending June 30, 1898.....	14,540,550.95	9,647,391.78	4,893,259.17

\*Arriving at the expenses of operation, full provision has been made for replacement of rolling stock, etc., and cross-ties.

## # Southern Pacific Company—Statement of operations.

According to the annual reports, the surplus of the Southern Pacific Company and of its proprietary companies, after payment of all expenses, including taxes, interest on funded debt and sinking-fund payments, and after deducting advances to the Oregon and California Railroad Company, but without deduction of betterments and additions, was:

For year ending June 30, 1897.....	\$1,900,720.78
do                   do.                   1898.....	4,122,602.61

Whereas, after deduction of betterments and additions, the amounts were as follows:

For year ending June 30, 1897.....	\$1,108,046.56
do                   do.                   1898.....	2,828,344.58

## EXHIBIT C.

Senate Document No. 227, 56th Congress, 2d Session.

Interest upon certain allowed claims.

March 2, 1901.—Ordered to be printed.

Mr. Stewart presented the following letter, signed L. J. Gage, Secretary, relating to the question of interest upon certain allowed claims for transportation services rendered to the Government over the nonbonded lines of the Central Pacific Railroad Company and Southern Pacific Company, and transmitting a statement as to the dates when the claims were settled and allowed by the accounting officers, and also as to such claims as were embraced in the judgments rendered in favor of the companies.

MAY 12, 1900.

Sir: The department is in receipt of your communication of the 8th ultimo, inclosing copy of an amendment offered to the sundry

civil bill now pending before your committee, relating to the question of interest upon certain allowed claims for transportation services rendered to the Government over the nonbonded lines of the Central Pacific Railroad Company and Southern Pacific Company. The amendment proposed provides for interest at the rate of 4 percent per annum upon amounts which became due from the United States to the Central Pacific Railroad Company and the Southern Pacific Company for transportation services rendered to the Government over the lines of these companies for which no subsidy bonds were issued by the United States in aid of their construction.

Replying to your request to be furnished with a statement in as much detail as practicable as to the dates when these claims were settled and allowed by the accounting officers, and also as to such claims as were embraced in the judgments rendered in favor of the companies, I have the honor to state that under the Pacific railroad acts of 1862 and 1864 one-half of the earnings from Government transportation over the bond-aided roads was required to be applied to the payment of the principal and interest of the subsidy bonds issued by the Government in aid of their construction, and by the act of May 7, 1878, commonly known as the Thurman Act, the other half of Government transportation earnings over the bond-aided lines were to be withheld and applied to the sinking fund created by said act. Neither of these acts related to the transportation earnings over the nonbonded lines, which, under certain decisions of the Supreme Court, were required to be paid in cash.

The services for which payment was withheld were rendered most part during the years 1883 to 1896, inclusive. Under various rulings of the accounting officers, payments for these services being withheld, suit was commenced by the Central Pacific Railroad Company in the Court of Claims in November, 1885, for recovery of amounts then due and for further amounts accruing for similar services. This case was decided in favor of the company and, on appeal by the Government, was affirmed by the Supreme Court.

After the spring of 1885 the transportation services for the Government over the nonaided lines of the Central Pacific Railroad Company were rendered by the Southern Pacific Company as lessor of these lines, and as compensation for such services was also withheld, suit was commenced by the Southern Pacific Company in the Court of Claims therefor, and judgment was rendered in favor of the company in January, 1893, for \$1,824,336.44. The question as to withholding payment having already been decided by the Supreme Court, as above stated, no appeal was taken by the Government.

The Second Comptroller, in a decision rendered in August, 1885,  
says:

"With reference to the order of the late Secretary of the Treasury of January 12, 1884 (directing that all balances ascertained by the accounting officers to be due for these services should be certified without suggestion as to the mode of payment, but should be held in abeyance for the future disposition of Congress), it is difficult to see how it can longer be upheld. It was evidently intended only to be temporary in its operation and to anticipate that some explanatory or remedial legislation by Congress would be had; but two sessions have since passed, and that body had manifested no disposition to further legislate upon the subject. Under this order an approximate estimate shows that over \$900,000 are now held in suspense, having been neither paid to the company or credited to them under the Thurman Act. It is clear that the Government can not properly refuse to act at all in the matter. It should either pay this money over to the company or else it should be covered into the Treasury and invested and applied, as required by the act of 1878."

The following is a summary of the amounts of interest on the various allowed claims computed at 4 per cent:

Interest on claims embraced in judgments of the Court of Claims for the periods from the respective dates of rendition of such judgments to the respective dates of payment thereof.	\$640, 041. 89
Balance of interest, exclusive of amount stated in foregoing, on all claims from the respective dates of certifications by the accounting officers to the respective dates of payment thereof.	856, 048. 52
Total amount of interest.	1, 496, 080. 41

Credit for these claims and judgments amounting to \$1,162,939.48 was allowed in settlement agreement entered into with the company by the United States February 1, 1899, but in the absence of express authority of law the amounts of interest as herein stated were not allowed.

I inclose herewith a statement showing somewhat in detail the amounts of interest on claims embraced in each judgment and the interest on allowed claims separately. These judgments and claims are all reported in Senate Document No. 34, Fifty-fourth Congress, second session, and Senate Document No. 35, Fifty-fourth Congress, first session.

I have also had prepared a statement showing by date, number, and amount each allowed claim, and the date, number, and amount of each judgment, with the interest computed at 4 per cent thereon from the respective dates of settlement by the accounting officers

to the dates of payment thereof, which I will take pleasure in forwarding to the committee should it so desire.

Respectfully,

L. J. GAGE,  
Secretary.

Hon. W. B. ALLISON,

*Chairman Committee on Appropriations,*

*United States Senate.*

51. Statement showing amounts of interest at 4 per cent per annum on claims allowed by the accounting officers for transportation services rendered for the United States by the Central Pacific Railroad Company and Southern Pacific Company over lines in aid of the construction of which no subsidy bonds were issued by the United States.

CLAIMS EMBRACED IN JUDGMENTS.

	Amount of claims.	Interest from dates of certification to rendition of judgments.	Interest from dates of rendition of judgments to dates of payment.	Total
Judgment No. 14711, rendered by Court of Claims March 8, 1886, favor of Central Pacific Railroad Co., first reported in House Ex. Doc. 181, Fifty-first Congress, first session, Senate Document 34, Fifty-fourth Congress, second session.	\$1,112.31	\$36.21	\$574.65	\$661.17
Judgment No. 15781, rendered by Court of Claims February 11, 1890, favor of Central Pacific Railroad Co., first reported in House Ex. Doc. 234, Fifty-first Congress, second session, Senate Document 34, Fifty-fourth Congress, second session.	804,094.31	125,256.18	261,716.13	336,926.42
Judgment No. 16697, rendered by Court of Claims January 31, 1893, favor of Southern Pacific Company, first reported in Senate Ex. Doc. 39, Fifty-second Congress, second session: Senate Document 34, Fifty-fourth Congress, second session.	499,208.46	106,376.76	68,165.90	174,720.06
Senate Document 236, Fifty-fourth Congress, first session.	1,310,281.09	265,443.12	309,535.18	336,968.39
Total interest on claims in judgments.		517,304.27	640,041.89	1,157,346.16

CLAIMS NOT IN JUDGMENTS.

	Amount of claims.	Interest from dates of certification to dates of payment.
Senate Document 34, Fifty-fourth Congress, second session.	\$1,043,631.03	\$312,188.13
Senate Document 236, Fifty-fourth Congress, first session.	298,837.50	126,564.00
Total interest on claims not in judgments.		338,752.13
Total interest.		1,496,098.32

SUMMARY.

Interest on claims in judgments from dates of rendition of same by the Court of Claims to dates of payment or settlement.	\$661,346.16
Interest on claims in judgments from dates of certification by the accounting officers to dates of rendition of judgments.	\$517,304.27
Interest on allowed claims, not in judgment, from dates of certification by the accounting officers to dates of payment or settlement.	338,744.35
Total interest.	1,496,098.32

District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,  
vs.

SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY, UNION TRUST COMPANY OF NEW YORK, WILLIAM SPROULE, JULIUS KRUTTSCHNITT, ROBERT GOELET, CORNELIUS H. BLISS, WALTER P. BLISS, HENRY W. DE FOREST, HORACE HARDING, CHARLES W. HARKNESS, HENRY E. HUNTINGTON, JAMES N. JARVIE, LEON F. LOREE, LEWIS J. SPENCE, ERIC P. SWENSON, JAMES N. WALLACE, AND OGDEN KILLE, DEFENDANTS.

In Equity. No. 420.

*of defendant Union Trust Company of New York to the petition of the United States of America herein.*

This defendant denies that it is restraining, or attempting to monopolize, or is monopolizing, trade or commerce in respect of the transportation of persons or property between the mentioned in the petition, or any of them, in violation of the of Congress approved July 2, 1890, entitled "An act to protect and commerce against unlawful restraints and monopolies." This defendant denies that it is violating the provisions of the act Congress approved July 1, 1862, and the amendments and supplements thereto, described in said petition as the "Pacific railroad

so far as the allegations of the petition hereinabove denied as to relate to the other defendants, the defendant Union Trust Company of New York is without knowledge.

## I.

This defendant admits that Southern Pacific Company is a Kentucky corporation with offices in New York City.

This defendant admits that Central Pacific Railway Company is a California corporation.

This defendant admits that Union Trust Company of New York is a New York corporation with its principal offices in New York, and that it, as trustee of a certain mortgage made to it by the Southern Pacific Company and dated August 1st, 1899, holds certain capital stock of the Central Pacific Railway as hereinafter forth; but it denies that it holds said capital stock as trustee for Southern Pacific Company, and alleges that it holds the said

stock as the trustee for, and for the protection of, the owners of the bonds secured by the aforesaid mortgage.

3 Except as to the allegations hereinabove specifically admitted or denied this defendant is without knowledge as to the allegations contained in the first article of the petition.

## II.

This defendant admits that Southern Pacific Company owns and operates the "Sunset Route", a joint rail-and-water service which moves traffic between New York City and Pacific coast terminals in California and Oregon.

This defendant admits that on August 1, 1899, the Southern Pacific Company executed an instrument known as the "Southern Pacific Company's Four Per Cent Mortgage (Central Pacific stock collateral)" (*not* "Central Pacific Company's stock collateral") to secure \$36,819,000 (*not* \$36,818,500) of 4% bonds secured by pledge with the Union Trust Company of New York of practically the entire stock of the Central Pacific Railway Company—672,742 shares of the common stock of the Central Pacific Railway Company of the par value of \$67,274,200 (*not* \$67,275,000), and 174,000 shares of the preferred stock of the Central Pacific Railway Company of the par value of \$17,400,000, which stock is now held by this defendant as collateral security under said mortgage.

Except as to the allegations hereinabove specifically admitted or denied this defendant is without knowledge as to the allegations contained in the second article of the petition.

## III.

4 This defendant is without knowledge as to the allegation contained in the third article of the petition that it was intended that the road or roads therein referred to although built by different companies should be run as one connected, continuous through line.

## IV.

This defendant is without knowledge as to the allegations contained in the fourth article of the petition.

## V.

This defendant admits that the Southern Pacific Company, prior to August 1, 1899, became the owner of all or nearly all of the stock of the Central Pacific Railway Company, which stock is now deposited with this defendant as collateral security as set forth in the second article of this answer.

Except as hereinabove specifically admitted this defendant is without knowledge as to the allegations contained in the fifth article of the petition.

## VI.

This defendant is without knowledge as to the allegations contained in the sixth article of the petition.

## VII.

Further answering the petition herein the defendant Union Trust Company of New York alleges that on August 1st, 1899, a certain mortgage or deed of trust was made by and between the defendant Southern Pacific Company and the defendant Union Trust Company of New York by the terms of which the defendant Southern Pacific Company agreed to pledge and deposit with the defendant Union Trust Company of New York certificates of the preferred stock of the Central Pacific Railway Company to the amount at its face value of \$12,000,000, and certificates of the common stock of said company to the amount at its face value of \$67,274,200, the said certificates to be assigned a blank with irrevocable powers to transfer the same; and it was further provided and agreed that the certificates so pledged and deposited should be held by the defendant Union Trust Company of New York upon the terms and conditions expressed in said instrument, upon trust for the benefit of the persons who should become holders of the bonds to be issued under said mortgage, to secure to such holders the punctual payment of the said bonds and the interest thereon as it should become due; and it was further provided and agreed that additional preferred stock of said Central Pacific Railway Company, not exceeding in the aggregate \$8,000,000, should be deposited in a similar manner, and upon the same terms, conditions, and trusts with the defendant Union Trust Company of New York when delivered to the said Southern Pacific Company.

That pursuant to the terms of said instrument the said Southern Pacific Company has deposited with the defendant Union Trust Company of New York, as trustee as aforesaid, certificates of preferred stock to the amount at its face value of \$17,400,000, and certificates of common stock to the amount at its face value of \$67,274,200 of the said Central Pacific Railway Company, the said certificates being endorsed in blank with irrevocable power to transfer the same; and that bonds secured by the said mortgage have been issued to the amount of \$34,218,500. This defendant alleges, upon information and belief, that the said bonds were issued for value and are now held by many investors whose names are to

it unknown, and that the said bonds do not become due until August 1st, 1949.

Wherefore the defendant Union Trust Company of New York prays that the petition herein may be dismissed with costs to this defendant, or that if the court shall grant to the petitioner any relief to which it shall seem to the court that said petitioner is entitled, that then and in that event this court will make a decree which will not in any way affect the lien of the mortgage to this defendant or in any way depreciate the value of the shares of stock of the Central Pacific Railway Company deposited with it as collateral to said mortgage.

UNION TRUST COMPANY OF NEW YORK,  
By J. V. B. THAYER,  
*Vice President.*

DICKSON, ELLIS, ELLIS & SCHULDER,  
*Attorneys for Defendant,*  
*Union Trust Company of New York.*

WILLIAM H. DICKSON,  
PERRY D. TRAFFORD,  
*Of counsel for said Defendant Union Trust Company of New York.*

1 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,  
vs.  
SOUTHERN PACIFIC COMPANY AND OTHERS, Defendants } In Equity. No. 420.

The above-entitled cause being at issue on petition and answers filed,

On motion of counsel for petitioner, and with the consent of counsel for the defendants,

It is ordered that Frank R. Hanna, Esq., of New York, N. Y., be and he is hereby designated and appointed special examiner herein, to fix and hold hearings for the taking of such evidence as either party may desire to adduce before him, whether within or without the district of Utah, and he is hereby empowered to cause to be summoned for such hearings all witnesses and to administer to each the proper oath as such, and it shall be his duty to take and report to this court all evidence thus adduced and offered by the petitioner and the defendants, respectively, together with such objections as may be offered thereto. Such examiner shall have full authority expeditiously to carry out fully the intent and purposes of this order.

He shall at once give notice by mail to counsel for the respective parties of his appointment herein attaching a copy of this order.

The date of the commencement of taking testimony herein is hereby fixed at July 20th, 1914, at 11 o'clock a. m. The examiner shall, as soon as may be, give reasonable notice of all subsequent hearings, either personally or by mail, telegraph, or by an order entered in any regular hearing, to at least one counsel for the petitioner, and one counsel for each of the defendants which have filed separate answers, viz, for the petitioner, James W. Orr; for the defendants other than the Union Trust Company, William F. Herrin; for the defendant, Union Trust Company, Perry D. Trafford. The examiner may continue such hearings from time to time by order made and entered during any regular hearing held hereunder. The examiner may, upon application of any of the parties and upon reasonable notice fix the time and place for the taking of testimony in said cause. Also the respective parties may from time to time agree as to the time and place of taking testimony. The examiner shall report to this court the testimony as completed and all proceedings had before him, by filing with the clerk of this court a duly certified typewritten or printed copy thereof.

On representation of counsel for the parties hereto, that the character and volume of testimony to be taken in this case, and the residence of the witnesses in different parts of the country, beyond the reach of subpoena, make it impossible to complete the taking of testimony within the time limits prescribed by the rules of court, it is

Further ordered that extensions of time in which parties may take testimony be and they are hereby granted and fixed, viz: The petitioner shall have until February 1st, 1915, in which to complete taking its opening testimony, the right, however, being reserved to petitioner to apply for further extensions of time therefor; defendants shall have until August 10th, 1915, in which to complete taking their testimony in chief, with right reserved to apply for further extensions of time so to do; the fixing of the period of time for taking rebuttal testimony being reserved until the completion of the testimony in chief by both sides. Provided, That if the petitioner shall finish taking its opening testimony before the date herein fixed, then it shall give written notice thereof to defendants, and the time for taking defendants' testimony shall begin twenty days from receipt of such notice and end six months thereafter, and if defendants shall complete taking their testimony before the time so fixed they shall so notify petitioner, and the time for taking rebuttal testimony shall then be fixed by the court. The right is reserved to each party

hereto to apply to the court for further extensions of time for the taking of testimony.

The said examiner, if at any time unable, for any reason, to perform the services required of him hereunder, may designate some suitable, competent person, to act in his place and stead, with full powers as herein stated, subject, however, to the approval of the counsel for the petitioner and for the defendants.

4. Witnesses shall not be required to sign their testimony unless special request so to do is made to the examiner by counsel for either side within 24 hours from the time the witness was excused.

By agreement of counsel the hours for the taking of testimony on any given date shall rest in the discretion of the examiner.

The compensation of the examiner for services herein contemplated is fixed as follows:

For acting as examiner and for reporting, and making the transcript of testimony, proceedings, and exhibits in this case he shall be allowed and paid at the rate of twelve and one-half cents (12½ cts.) per page of 22 lines for the original transcript and for each of 4 additional copies neostyle, of which copies he shall deliver daily the morning after the evidence is taken two to each the petitioner and the defendants herein, to be paid for by them, respectively. For additional copies he shall receive 5c. per page of 22 lines. The party at whose instance the witness is called shall pay for the original transcript. The examiner shall also be paid by the party at whose instance the testimony is taken, when away from New York upon duties connected with this case, his actual and necessary expenses of lodging and subsistence not to exceed \$5.00 per day, his actual and necessary expenses of transportation also \$5.00 per day when so absent from New York and no testimony is taken.

(Signed) J. A. MARSHALL,  
*Judge.*

5. Dated this 12th day of June, 1914.

We assent to the foregoing order,

JAMES W. ORR,

*Counsel for the Petitioner.*

J. P. BLAIR,

*Counsel for the Defendants.*

PERRY D. TRAFFORD,

*Counsel for Deft. Union Trust Co.*

Filed June 12, 1914.

JERROLD R. LETCHER,

*Clerk.*

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,  
vs.  
SOUTHERN PACIFIC COMPANY ET AL., DEFENDANTS.

I, Frank R. Hanna, special examiner herein, hereby certify that the accompanying testimony, volumes Nos. 1 to 10, and petitioner's exhibit, volumes Nos. 1 to 12, contain the evidence and exhibits offered by the petitioner, United States of America; that the accompanying testimony, volumes Nos. 11 to 30, and defendants' exhibit, volumes Nos. 1 to 9, contain the evidence and exhibits offered by the defendants, Southern Pacific Company et al.; and that said volumes contain all of the evidence and exhibits offered in this cause by the respective parties hereto.

And I further certify that I have filed with the clerk of the District Court of the United States for the District of Utah the aforesaid volumes of testimony and exhibits, together with the original exhibits delivered to me by the respective parties.

Witness my hand at New York, N. Y., this 26th day of June, 1915.

FRANK R. HANNA,  
*Special Examiner.*

In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,  
vs.  
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC  
Railway Company, Union Trust Company of  
New York, William Sproule, Julius Krutt-  
schmitt, Robert Goelet, Cornelius N. Bliss,  
Walter P. Bliss, Henry W. De Forest, J.  
Horace Harding, Charles W. Harkness,  
Henry E. Huntington, James N. Jarvie,  
Leonor F. Loree, Lewis J. Spence, Eric P.  
Swenson, James N. Wallace, and Ogden Mills,  
Defendants.

In Equity. No. 420.

ROOM 720, CUSTOM HOUSE,  
*New York City, Sept. 21, 1914.*

The above-entitled cause came on for hearing before Special  
Examiner Frank R. Hanna, Esq., at eleven o'clock a. m.

## APPEARANCES.

On behalf of the United States: James W. Orr, Esq., Edward P. McClenen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

2 On behalf of the defendants: W. F. Herrin, Esq., J. H. Blair, Esq., and P. F. Dunne, Esq., for the Southern Pacific Company, the Central Pacific Railway Company, and the individual defendants named in the petition; Perry D. Trafford, Esq., for the Union Trust Company of New York.

3 The EXAMINER. We will proceed with the hearing, gentlemen.

Mr. BLAIR. Before any evidence is offered we desire to interpose the following objection:

The Southern Pacific Company, the Central Pacific Railway Company, and the individual defendants, having made the plea in bar and estoppel set forth in paragraphs IX and X of their answer herein, and desiring and intending to insist upon said plea, and desiring and intending further to rely upon the said record, proceedings, and decree referred to in paragraph X of the answer and the argument of counsel as conclusive proof of the existence, prior to the merger in 1901 between the Union Pacific Company and the Southern Pacific Company, of competition between the two companies and the want of power in the Southern Pacific Company to prevent such competition, now formally object to any evidence in support of the issues covered by said pleas or the further matter in respect to which the said prior proceedings and record are claimed to be conclusive, and state that any cross-examination they may make is made without waiver, but with full reservation of their said pleas and contentions. And to save useless repetition they ask that this objection and reservation be considered as made to all the testimony about to be taken in this cause, and they give notice that said objection and reservation are so made.

4 Mr. McCLENNEN. The petitioner offers as Exhibit No. 1 this map of the United States. I take it that defendants will not object or require any formal proof of this.

Mr. BLAIR. Not so far as it is a map of the United States; but so far as it may show the location and situation of the lines of railroad, we have not seen it and do not know whether it is correct or not.

(The map referred to was marked by the examiner "Petitioner's Exhibit No. 1, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 2, 12th U. S. Statutes at Large, page 489, chapter 120, the act of July 1, 1862, which reads as follows. I take it that I need not read it. It may simply be copied into the record.

Mr. BLAIR. We should be willing to make the agreement that all acts of Congress relating to the Union Pacific Railroad Company may be considered in evidence without being formally offered.

Mr. McCLENNEN. I think it is going to be convenient to have them right in the record, anyway.

Mr. BLAIR. Are you going to have them copied right into the record?

Mr. McCLENNEN. Yes; these Pacific railroad acts. I think it will be convenient to have them copied in, so we can refer to the copies in the record.

Mr. BLAIR. Mr. McClellan, I do not want to make a captious objection, but those acts need not be offered in evidence. They are in notice of by the courts, and I do not think we should be put to the expense, or that anybody should be put to the expense, of having the acts of Congress copied in the transcript of the testimony.

Mr. McCLENNEN. It is not going to be a very serious expense.

Mr. BLAIR. They are very long acts.

Mr. McCLENNEN. There will be constant reference to them, and it will be very convenient to have them all together in the record.

Mr. HERRIN. I never heard of the introduction in evidence of a copy of an act of Congress. It is a matter which may be referred to at any time.

Mr. McCLENNEN. We want it more for the convenience of having the acts all together for easy reference, without having to refer to the volumes of the statutes every time we refer to the acts. (The act referred to was thereupon marked "Petitioner's Exhibit No. 2, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as petitioner's Exhibit No. 3, 12th Statutes at Large, page 356, chapter 216, the act of July 2,

Mr. BLAIR. The same objection to the incorporation of that in the record.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 3, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 4, 13th Statutes at Large, page 504, chapter 88, the act of March 3, 1865.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 4, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

7 Mr. McCLENNEN. The petitioner offers as Exhibit No. 5, 14th Statutes at Large, page 79, chapter 159, the act of July 3, 1866.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 5, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 6, 14th Statutes at Large, page 292, chapter 278, the act of July 27, 1866.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 6, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 7, 15th Statutes at Large, page 79, chapter 77, the act of June 25, 1868.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 7, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 8, 16th Statutes at Large, page 56, joint resolution No. 19, of April 10, 1869.

8 (The resolution referred to was thereupon marked "Petitioner's Exhibit No. 8, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 9, 16th Statutes at Large, page 573, chapter 122, the act of March 3, 1871.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 9, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 10, 18th Statutes at Large, page 111, chapter 331, the act of June 20, 1874.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 10, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner offers as Exhibit No. 11, 20 Statutes at Large, page 169, chapter 316, the act of June 19, 1878.

(The act referred to was thereupon marked "Petitioner's Exhibit No. 11, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

9 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 12 a statement entitled "Outline history of corporate organization of the Central Pacific Railroad Company", prepared under the supervision of counsel for the defendants and tendered by them as believed to be accurate, this offer being made under the agreement that either party is to have the right, which is hereby reserved to offer additional, explanatory, or corrective evidence on the same subject.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 12, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 13 a statement entitled "Outline history of corporate organization of the Southern Pacific Railroad Company", prepared under the supervision of counsel for the defendants and tendered by them as believed to be accurate, this offer being made under the agreement that either party is to have the right, which is hereby reserved, to offer additional, explanatory, or corrective evidence on the same subject.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 13, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 14 stipulation of September 17, 1914, as to the officers and directors from time to time of the Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company, including the lists attached thereto.

(The stipulation referred to was thereupon marked "Petitioner's Exhibit No. 14, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 15 the copies certified by the Secretary of the Interior under date of August 31, 1914, of the reports filed by the Central Pacific Railroad Company, beginning with the year 1864 and ending with the year 1877, to the extent only that those reports set forth the list of stockholders in the company.

(The papers referred to were thereupon marked "Petitioner's Exhibit No. 15, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. HERRIN. Are these photographs of the originals on file?

Mr. McCLENNEN. As I understand; yes.

Mr. BLAIR. We have no objection, provided the right be reserved to us to offer any part of those reports which we may consider relevant.

Mr. McCLENNEN. There is no objection to your so doing, of course, reserving our right to object to them as to relevancy, and with the understanding that none of them will be offered unless in some way they are called to our attention specifically before the close of your testimony.

The petitioner puts in evidence as Exhibit 16 the copies certified by the Secretary of the Interior under date of August 31, 1914, of the reports of the Southern Pacific Railroad Company, filed in the office of the Secretary of the Interior for the years from 1868 to 1877,

inclusive, so far only as these reports give the names of the stockholders.

Mr. DUNNE. To the same extent and for the same purpose as Exhibit 15?

Mr. McCLENNEN. Yes.

Mr. BLAIR. And with the same reservation?

Mr. McCLENNEN. Yes, and the same agreement.

(The papers referred to were thereupon marked "Petitioner's Exhibit No. 16, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

12 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 17 the certified copy by W. M. Thompson, Secretary of the Central Pacific Railroad Company, of the minutes of the meeting of April 12, 1898, of that company.

Mr. BLAIR. We object to this as irrelevant, immaterial, incompetent, and without foundation, and on the ground that there is no proof whatever of the signature or authority of the officer purporting to give the certificate.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 17, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

JOHN MUIR was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your residence?

A. New York City.

Q. And your address?

A. 74 Broadway.

Q. I show you what purports to be a print of an agreement of the Transcontinental Association dated September 28, 1883. Can you tell me whether that agreement was executed by you?

A. Yes.

13 Q. And in what capacity did you execute it?

A. I was superintendent of traffic of the Northern Pacific Railroad Company.

Q. Was the agreement executed by the Southern Pacific Company?

A. Yes.

Q. Entitled "Southern Pacific Railway Company"?

A. Yes.

Q. And by whom for that company was it executed?

A. By Mr. A. N. Towne.

Q. What was Mr. Towne at that time?

A. General manager.

Q. Have you any knowledge of where the original agreement was?

A. I do not know.

Q. What was the last that you knew of it?

A. I have no recollection now of it except of the time when it was executed.

Q. Where was that?

A. It was executed in the Palace Hotel in San Francisco, the first one; and there was a subsequent one, I think, confirmatory of it, with some changes, in Topeka, Kansas.

Q. Now, is the subsequent one to which you refer, this one that I show you, headed "Topeka, Kansas, November 8, 1883"?

A. Yes.

Q. Was that signed by you?

A. Yes.

Q. And was it signed by the Southern Pacific Railroad Company?

A. Yes; the same parties as to that first agreement.

Q. By Mr. Towne as general manager of that company?

A. Yes.

Q. Do you recognize those two as being copies of the original agreements?

A. As well as I can. I have glanced over them, but after thirty years, of course, my recollection of the details is not quite as clear as it might be; but as well as I can remember these are the copies of the agreements which were then executed.

Q. I understand you that you have no knowledge of the whereabouts of either?

A. At that time there was a copy or copies delivered to each of the roads that signed the agreement.

Q. And who kept the original?

A. I can not recall one as being an original. I should think they would all be signed by the different parties, and each one be furnished with a copy.

Q. Each one having a signed one?

A. That is what I recall.

Q. What was the last that you knew of your copies of the originals?

A. I would naturally have taken that and delivered it to probably the auditor of the Northern Pacific Railway Company in St. Paul. That was the headquarters of the Northern Pacific Railway Company—to the proper custodian, whoever he might have been at that time.

Q. Do you remember in whose hands the copies belonging to the Southern Pacific Railroad Company were left at your meeting?

A. All I recall is that the two principal parties in connection with that agreement on behalf of those two roads were A. N. Towne, who signed it, and Mr. J. C. Stubbs, who had a great deal to do with framing it. He had probably the most of any of the parties to say as to its form.

Q. Do you know whether any of the originals were left with the Transcontinental Association?

16-17 A. I do not know, as a matter of fact, but I believe they were, as it would be the natural thing to do.

Mr. BLAIR. Counsel objects to that answer on the ground that—  
The WITNESS (interrupting). I do not know.

Mr. BLAIR. The witness says he does not know, and counsel objects to any other part of the answer except the statement by the witness that he does not know.

18 Q. Where were the headquarters of the Transcontinental Association at the time of the agreement?

A. The Transcontinental Association was then just formed, and I think the headquarters were fixed at first at San Francisco and subsequently at Chicago.

Q. The Transcontinental Association was finally dissolved, was it not?

A. Long after my severance from the Northern Pacific road.

Q. Are you able to give the date?

A. No, sir.

Q. You severed your connection with the Northern Pacific at what time?

A. I think in the following year, 1884, at the time of the Villard collapse.

Mr. McCLENNEN. The petitioner offers as Exhibit No. 18 the agreement of September 28th, 1883, just referred to by the witness, and the petitioner offers as Exhibit No. 19 the agreement of November 8, 1883, just referred to by the witness.

19 Mr. BLAIR. Counsel objects, first, on the ground that the execution of the documents has not been sufficiently proved, nor has it been sufficiently proved that the documents are correct copies of the originals; and, further, on the ground that the foundation has not been laid for the offer of a copy in lieu of the originals; and, finally, in the alternative on the ground that the originals would be irrelevant, immaterial, and incompetent evidence to any issues in this case.

Mr. McCLENNEN. It is agreed by counsel that the prints themselves need not be marked, but that the transcription of the documents in the record shall have equal force with the prints.

Mr. BLAIR. They may be copied in the transcript.

(Copies of the papers referred to were marked, respectively, "Petitioner's Exhibit No. 18, September 21, 1914", and "Petitioner's Exhibit No. 19, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. BLAIR. No questions, Mr. Muir.

(Witness excused.)

HUGH NEILL was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Hugh Neill.

Q. What is your residence?

A. New York City.

Q. And what is your address?

A. No. 121 West 11th Street.

Q. Are you the secretary of the Southern Pacific Company?

A. I am.

Q. And you have been how long?

A. Since January 31, 1913.

Q. Do you hold any official position in the Southern Pacific Railroad Company, the Central Pacific Railroad Company, or the Central Pacific Railway Company?

A. I hold the position of assistant secretary, I believe, of the Southern Pacific Railroad Company and of the Central Pacific Railway Company. That is my recollection. I do not think I am an officer of the Central Pacific Railroad. I would have to verify that by looking at the record. I did not know what I would be asked.

Q. What is the general scope of the duties which you perform as secretary?

A. Of what company; of the Southern Pacific Company?

Q. Of the Southern Pacific Company?

A. I attend all meetings of the board of directors and of the executive committee of the board of directors, and have general charge of the minutes, and under the by-laws perform such other duties as are assigned to me by the board of directors, the executive committee, or the chairman.

Q. Do you have the custody of any of the records or documents of any of these companies?

A. I have the custody of many—not all—of the original agreements entered into between the Southern Pacific Company and the other companies. I do not know just what you mean by "docu-

ments". I have custody of the official minutes of the Southern Pacific Company.

Q. Do you have the custody of the minutes or contracts of any of the other three companies just mentioned?

22 A. I have not the custody of the minutes—the official minutes—of either the Central Pacific Railway Company, the Central Pacific Railroad Company, or the Southern Pacific Railroad Company. So far as I recall, I have not the custody of any agreements or other documents—original documents—of those companies, except perhaps some agreements in which the Southern Pacific Company is a party.

Q. Some of the records and documents of these companies were destroyed in the San Francisco fire of 1906, were they not?

A. Practically all of the records then in storage at San Francisco were destroyed in that fire.

Q. Were there any records in New York destroyed by fire?

A. Well, there was a fire in New York in January, 1912, known as the Equitable Building fire. I was not then secretary of the company. I know, as a matter of general information, that a great many office records were destroyed in that fire.

Q. Do you know whether any of these four companies have any of the original minutes of the meetings of stockholders and the meetings of directors and the meetings of executive committees occurring prior to 1906?

23 A. I could not state as to the Southern Pacific Railroad Company, the Central Pacific Railroad Company and the Central Pacific Railway Company because, as I stated before, I have not the custody of the original records of those companies; and for the Southern Pacific Company, the records—by which I understand you mean the minutes—prior to 1906 are destroyed—are not in existence.

Q. Do you know, as matter of general information in your office, whether the same is true of the other three companies?

A. My understanding is that they were destroyed in the San Francisco fire.

Q. And does that apply as well to the original contracts of these four companies?

A. I can not answer as to that, because I do not know who had the custody of the contracts at that time. I can not testify of my own knowledge after January 31, 1913.

Q. The main offices—the head offices—of these four companies in 1906 were in San Francisco, were they not?

A. I can not state as to that. I do not know what you mean by "main offices".

Q. The offices where the principal transactions would be kept of record in ordinary course of business.

¶ Mr. ORR. The offices of the president.

By Mr. McCLENNEN:

Q. (Continuing.) Where the offices of the president and chief officials were?

A. As matter of general information I could state that my belief is that the main offices of the Southern Pacific Company in 1906 were located in New York City; that is to say, that the president of the company had his headquarters located in New York City. Without reference to data or office records I could not say as to the other companies. I do not recall, at the moment, who were presidents of the companies at that time; that is, of the three subsidiary companies.

Q. Were the San Francisco offices of the four companies all together?

A. My belief is that they were located in the same building.

Q. And were the offices of the four companies in New York all together?

A. I can not answer that question categorically, for the reason I have stated; I had no official connection with either one of the four companies in 1906, though I was an employe of the Southern Pacific Company.

¶ Q. Did the Southern Pacific Company, as a large stockholder in any of these other companies, have in its possession any of the records, minutes, or documents of any of the other three companies?

¶ A. At what time do you mean?

Q. At the time of these respective fires.

A. I could answer only as a matter of general belief. As I stated, I had no custody of the records at that time.

Q. And that would be what?

A. That there were probably in the offices of the Southern Pacific Company copies of various documents and records of the other three companies mentioned. As to the custody of the original records, I can give no answer.

Q. Have you seen the seal, or papers bearing the seal, of the Central Pacific Railroad Company from time to time?

A. I have seen the impression of the seal.

Q. I refer to petitioner's Exhibit 17. Is that the impression of the seal of the Central Pacific Railway Company?

A. (After examination.) Without further opportunity for investigation and study I could not answer.

Q. Have you any recollection whatever of the characteristics of the seal of the Central Pacific Railway Company?

A. I have none.

Q. None whatever?

A. No.

27 Q. Have you in your possession or control any papers containing any impression of the seal of the Central Pacific Railway Company?

A. I think it possible that I have.

Q. Would you be willing to investigate and bring one this afternoon, if you can find one?

A. Yes; assuming that counsel advise me that it is entirely right and proper. It is a matter that I should follow their advice upon.

Mr. McCLENNEN. Counsel for the Government will advise you that it is entirely proper.

(Whereupon, at 12.35 o'clock p. m., a recess was taken until 145 o'clock p. m.)

Mr. BLAIR. Counsel for the defendants withdraw their objection to the authenticity of the seal and the signature of Secretary Thompson to Exhibit No. 17.

HUGH NEILL, the witness on the stand at the taking of recess, resumed the stand for further direct examination.

By Mr. McCLENNEN:

Q. I show you, Mr. Neill, what purports to be a printed copy of an agreement dated February 8, 1913, between the Union Pacific Railroad Company, the Southern Pacific Company, the Central Pacific Railway Company, the Southern Pacific Railroad Company, and the Oregon Short Line Railroad Company. Can you tell me whether you witnessed the execution of such an agreement?

A. I witnessed the execution of an agreement between the parties named on the date mentioned as secretary of the Southern Pacific Company.

Q. Is the original agreement in your possession?

A. One indenture of the original agreement is in my custody.

29 Mr. McCLENNEN. Mr. Blair, may we use this copy to the same extent as we might use the original?

Mr. BLAIR. No objection, reserving the right to correct any difference which may appear upon comparison of the copy with the original.

By Mr. McCLENNEN:

Q. That agreement was signed by Robert S. Lovett as chairman of the executive committee of the Union Pacific Railroad Company?

A. Yes; it was.

Q. And was signed by the Southern Pacific Company by J. Krutschmitt, chairman of the executive committee of the Southern Pacific Company?

A. Yes.

Q. It was signed by the Central Pacific Railway Company by William F. Herrin, president?

A. Yes.

Q. It was signed by the Southern Pacific Railroad Company by William Sproule, president?

A. Yes.

Q. And it was signed by the Oregon Short Line Railroad Company by Robert S. Lovett as chairman of the executive committee?

A. It was.

Q. And it bore the seals of those several companies?

A. Yes, sir; it did.

Q. And was attested by the secretaries of those several companies?

A. In some cases, by the secretaries; in other cases, by the assistant secretaries, as the agreement itself will show.

Mr. McCLENNEN. In accordance with the above agreement the petitioner puts in evidence as Exhibit 20 this printed copy of the agreement as for the original.

Mr. BLAIR. In order that we may determine intelligently whether we have any objections I would like to ask the purpose for which the offer is made.

Mr. McCLENNEN. The agreement is offered for all the purposes for which it may be relevant in this case, one of which is to show the practical feasibility of operating the Central Pacific Railroad, separated from the control of the Southern Pacific Company, and the practicability of overcoming any obstacles to a separation.

Mr. BLAIR. Counsel objects to the document offered on the ground that the same is irrelevant, immaterial and incompetent testimony with respect to any of the issues in this case.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 20, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 21 certificate of P. Thompson, registrar of Joint Stock Company, Somerset House, London, England, of copies of extracts from the documents on file in his office, of the Central Pacific Railroad Shareholding Company, namely, summary of the capital and shares, list of shareholders, extract from minutes of meeting of June 22, 1899,

relative to the winding up of the company, extracts from the articles of association of the company, and return of final winding up meeting.

Mr. BLAIR. Defendants' counsel waive the proof of the official character and signature of the officer certifying to the paper, but object to the offer as tending to adduce irrelevant and immaterial testimony.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 21, September 21, 1914", and will be found in the volume of petitioner's exhibits.)

32 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 22 the United States executive documents, first session, 50th Congress, 1887-1888, volumes 2 to 6, inclusive, containing volumes 1 to 9 of the report of the United States Pacific Railway Commission, containing a message from the President of the United States, Grover Cleveland, January 17th, 1888, transmitting the report of the Pacific Railway Commission; also containing that report; also containing the evidence and exhibits referred to in that report; and the petitioner calls attention to the following parts, on which the petitioner relies, from those reports and evidence:

Page 4 from the report of the commission: "We submit herewith the respective reports of these gentlemen, with the tables, statistics, and exhibits thereto appertaining, which will be found in volume 2 of the evidence and proceedings herewith submitted."

Mr. BLAIR. Counsel objects, so far as it includes any testimony taken before said commission, or any document, as irrelevant and incompetent and *res inter alios acta*, not binding upon these defendants, and that said documents do not prove themselves. We do not object to the report or the message of the President, although we do not consider that it is necessary to offer them in evidence.

33 Mr. McCLENNEN. In view of the objection the petitioner calls attention to the fact that the reports and evidence are not offered as evidence of the facts narrated therein, but as evidence of what was communicated to the Congress.

Mr. BLAIR. It is agreed that the message of the President and the report of the Pacific Railway Commission of 1887, and the documents and testimony covered by the above offer need not be copied into the transcript, but may be referred to in the official printed volumes with the same effect as if embodied in the transcript, and that in the event of appeal they need not be copied into the record, but may be referred to in like manner on appeal to the Supreme Court.

(The document referred to was thereupon marked "Petitioner's Exhibit No. 22, September 21, 1914".)

34 Mr. BLAIR. I understand you have offered all of that, have you not?

Mr. McCLENNEN. We have offered the whole thing in the way I stated it. Now, the parts to which the petitioner calls attention will indicate by page, or I will read, whichever is more convenient for you. There is not a great amount of it.

I read as follows from page 4: "We submit herewith the respective reports of these companies, with the tables, statistics, and exhibits thereto appertaining, which will be found in volume 8 of the evidence and proceedings herewith submitted."

From page 2572, from the statement of J. C. Stubbs, I read as follows:

"The through rates of fare for business between California and points in the eastern States are regulated by competition."

From page 2598 I read as follows: "There are now eight transcontinental railroad lines in addition to the original Union and Central Pacific line—that is to say, there are eight other lines, each of which competes in whole or in part with the original Union and Central Pacific line for the traffic interchanged between the Pacific coast and the territory of the United States and Canada east of the Rocky Mountains. They are as follows:

- (1) The original Union and Central Pacific line, opened for through traffic in May, 1869.
- (2) The thirty-second parallel route, or Atchison, Topeka and Santa Fe and Southern Pacific line, via Deming, opened in March, 1881.
- (3) The thirty-second parallel route, or Southern Pacific and San Joaquin and Central Pacific line, via El Paso, Tex., opened in January, 1882.
- (4) The thirty-second parallel route, or Galveston, Harrisburg and San Antonio Railway and Southern Pacific, via El Paso, Tex., opened in February, 1883.
- (5) The Burlington and Missouri River Railroad and Denver and Rio Grande in connection with Central Pacific, opened in May, 1883.
- (6) The Northern Pacific Railroad, opened in September, 1883.
- (7) The Atlantic and Pacific in connection with the Southern Pacific, opened in October, 1883.
- (8) The Oregon Short Line, the date of whose opening for business I am unable to give.
- (9) The Canadian Pacific, opened for business in July or August, 1885."

This is from the statement of J. C. Stubbs of July, 1887.

From page 2599, from an exhibit to Mr. Stubbs' statement, I read as follows:

"Exhibit A. Comparative statement showing freight tonnage and charges on through traffic and percentage of same done by each route in periods as noted."

It is not necessary for me to read the detail of that statement. You are familiar with it. I am constructively reading through page 2600.

Mr. BLAIR. Very well.

Mr. McCLENNEN. From page 2656, from the testimony of Leland Stanford, I read as follows:

"Q. You began paying dividends in 1873. How long after that was it before the stock began to be bought and sold?—A. We could not get it on the market until, I think, about 1880 or 1881. I think it was 1880. Then we sold, I think, five millions to a syndicate in New York and they put it on the market. They were better manipulators than we were. They put that stock on the market, and after that time it had a regular quotable value. I do not think it ever got below 60 cents on that market for several years, though we could not sell much of it. After that I believe it went down as low as 26. I think that was the lowest."

37 "Q. What is your present interest in the Central Pacific Company?—A. I do not know how it stands on the books, because my stock was sent east and was put in shape there to be transferred. I do not care much generally about telling my private business, but in this case I have no particular objection. I think I have about equal in value to thirty-two thousand, which would make \$3,200,000.

"Q. Thirty-two thousand shares of stock?—A. I think that would be about thirty-two thousand. I remember it rather according to its par value than otherwise.

"Q. And that is your present interest which you own in your own right?—A. Yes."

The date of this is July 29, 1887.

From page 2737, from the testimony of Leland Stanford of August 2, 1887, I read as follows:

"Still we were doing well up to 1881, and we thought that we would be able to meet our obligations at maturity. We passed resolutions for the establishment of a sinking fund to meet the obligations due the Government. But when the Thurman bill was passed it took the matter out of our hands, and the Government took it upon itself to look after this sinking fund. We had nothing to say about it. We were not satisfied, though we had no objection to the

38 Government being the custodian of the sinking fund. At that time we did not have any doubts as to our ultimate ability to pay the debt to maturity; but important competing lines of railroad were built. Up to the time of the completion of the Atchison, Topeka and Santa Fe road to a junction with the Southern Pacific at Deming, our only competitors were mule teams, ox teams, and pack animals. The rates were large, and we had no difficulty in get-

whatever we thought was fair. We could charge whatever we thought best. When the other road was built, however, business was diverted and the rates cut down. Whenever any new road was built, business fell off very perceptibly and the percentages fell off the way through. On the Central Pacific, the falling off in the business has been so great that now it commands but about per cent.

Some people have thought that we helped to divert this business in constructing the Southern Pacific road. This is not so, however. The construction of the Southern Pacific road was provided for by Congress, and its management went into the hands of people other than those who controlled the Central Pacific. It soon became evident that the best interests of the Central Pacific required that the control of the Southern Pacific should be in the same hands, and that that road should work in perfect harmony with the Central Pacific. It became a necessity, therefore, that we should control the Southern Pacific, and when opportunity offered we availed ourselves of it and purchased the controlling interest in the road. Since then the roads have worked in entire harmony, with the advantages of a pooling arrangement, and the advantages resulting from our system of leases."

From page 2803, from the testimony of Leland Stanford of August 3, 1887, I read as follows:

"The Southern Pacific, as perhaps you may have noticed, was organized under an act of Congress, and authority was given to people connected with the Central Pacific to build the road. We early saw that if that line of railroad was completed—if it crossed the Nevada Mountains—all the valleys of the State would be open to it and it would be a very serious competitor of the Central Pacific. So we tried to control it, and we have succeeded in controlling it; and the consequence is that it has never been operated to the prejudice of the Central Pacific."

From page 2829, from the testimony of Leland Stanford of August 3, 1887, I read as follows:

"Q. What effect had the construction of the Southern Pacific upon the Union Pacific?—A. So far as it diverted business, of course it was injurious; but we got on pretty well without cutting rates. There was no chance for the Southern Pacific to touch the Union Pacific at all, until the Atchison and Santa Fe reached it, and that immediately formed a new line; but before that the Southern Pacific went off by way of Fort Yuma and down into the Colorado, and it did not affect the Union Pacific business by as much as a penny or a pound of freight. There was no place where they could come into competition, but the moment that the Atchison and

Santa Fe touched the Southern Pacific and formed a through line for all the business of the interior as well as the Atlantic coast, then both the Union and the Central became affected.

"Q. What percentage of a year's business after the connection of these roads was affected or diverted?—A. I think you have it here. I think that year it had the immediate effect of diverting 23 per cent of the whole through business.

"Q. So that the income of the business of the Union Pacific, by reason of the construction of the Southern Pacific, was affected to the extent of 23 per cent?—A. Yes, sir. I may be mistaken as to it being immediately in that year, but I think the account

41 show that. I was going to say this: Neither we ourselves, individually, nor any of the Central Pacific people are in any manner responsible for the building of the Southern Pacific line. I mean to say they had nothing to do with procuring the Government aid for the Southern Pacific. They had no interest in the Southern Pacific until long afterwards. Mr. Anderson spoke yesterday about the Northern Pacific being provided for the same year that we were. That is a mistake. We organized and commenced work under the act of 1862, and our company accepted its terms. So that the provision for the building of the Northern Pacific was made two years after the commencement of the construction of the Central Pacific.

From page 3310, from the testimony of J. C. Stubbs of August 12, 1887, I read as follows:

"Commissioner LITTLER. What Congress will want to know is whether the Central Pacific and Union Pacific occupy such relation to the traffic of the Pacific coast that they can compete successfully with any other road from here to New York.

"The WITNESS. It does it and has done it.

"Commissioner LITTLER. That is one of the important questions to be considered in any further legislation that may take place in relation to this matter.

42 "The WITNESS. It is the shortest route and, in my judgment, with proper management, it is the best route, and always will be."

From page 3717, volume 5, from a letter of December 10, 1874, from C. P. Huntington, president, to Honorable Thos. A. Scott, president Texas Railway Company, Philadelphia, Pennsylvania, I read as follows:

"My great interest, of course, is with the Central Pacific, which will not be benefited by the construction of this road; but the parties who control the Southern Pacific are very anxious to have this southern line completed at an early day. And so long as I am acting as the president of the company I shall do all that I can to carry out their wishes."

From page 3738, from a letter to Mr. Colton of April 26, 1876, I as follows:

"Scott has several parties that I think do nothing else but write articles against the Central Pacific and its managers, then get them published in such papers as he can get to publish them at small cost, and sends the papers everywhere; and there is no doubt that he has done much to turn public sentiment against us. If it was known that the C. P. did not control the S. P. I think we could beat him all the time, although he had about the same advantage over us in Washington that we would have over him in."

From page 3751, from a letter of May 15, 1877, to Mr. Colton, I as follows:

"Scott is working everywhere for his open highway, but I think we can beat him; but it will cost money and harder work to beat him with money under the plan of some of my associates, viz: having understood that the C. P. and S. P. are, as it were, one property. It would be without money if the public could know the facts—that is, that the S. P. is a separate and distinct property."

Mr. McCLENNEN. In the same way, with the same limitations, the petitioner puts in evidence as Exhibit No. 23 the report of Mr. Morgan from the Committee on Pacific Railroads, March 29, 1897, in the Senate of the United States, 55th Congress, first session, Minority Report No. 20, part 2, together with the appendix thereto, being Senate Report No. 778, part 2, 54th Congress, first session, April 21, 1896, the same matter as appears in the appendix being printed as "Pacific Railroad Debt" and other Senate documents, 1896, in the 54th Congress, first session, Document No. 1, entitled "Government debt of the Pacific railroads; notes of hearings before the Senate on Pacific Railroads of the Senate of the United States on the subject of the indebtedness of the Pacific railroads to the Government." Ordered printed June 9, 1896.

Mr. BLAIR. The same objection is made as was made to the offer of Pacific Railroad Commission report and testimony, and the same attempt to obviate the necessity of copying this report into the record.

The minority report was thereupon marked "Petitioner's Exhibit No. 23-A, September 21, 1914", and the appendix was thereupon marked "Petitioner's Exhibit No. 23-B, September 21, 1914".

Mr. McCLENNEN. The parts to which the petitioner calls attention are: Original page 133, appendix page 71, the testimony of Collis P. Huntington, February 17, 1896:

Senator MORGAN. Did you have any in the Central Pacific?

Mr. HUNTINGTON. Yes.

Senator MORGAN. Did you transfer that stock?

"Mr. HUNTINGTON. No.

"Senator MORGAN. Have you got it yet?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. How much?

"Mr. HUNTINGTON. Not a great many shares. I suppose I have got four or five thousand shares.

"Senator MORGAN. How much money would that represent on the face value?

"Mr. HUNTINGTON. One thousand shares represent \$100,000.

"Senator MORGAN. And you have got four or five thousand shares, about \$500,000?

"Mr. HUNTINGTON. Yes."

Mr. McCLENNEN. Also original hearing page 139, appendix page 77, the same day; testimony of Collis P. Huntington:

46 "Senator MORGAN. You say the stock of the Central Pacific has been taken up by this Kentucky company?

"Mr. HUNTINGTON. Excuse me. The Southern Pacific Company has no stock in the Central Pacific.

"Senator MORGAN. None at all?

"Mr. HUNTINGTON. No.

"Senator MORGAN. No stockholder of the Central Pacific has ever exchanged his stock with the Southern Pacific?

"Mr. HUNTINGTON. No; I am sure of it. No stockholder of the Central Pacific was ever asked to exchange it.

"Senator MORGAN. You never would permit that?

"Mr. HUNTINGTON. We would not ask it to be done."

Mr. McCLENNEN. Also Appendix, page 108, original hearing, page 170, from the testimony of Collis P. Huntington, February 18, 1896.

"Senator MORGAN. The Southern Pacific was not built as a feeder to the Central Pacific?

"Mr. HUNTINGTON. No."

Mr. McCLENNEN. Appendix, page 136, original hearing, page 193, testimony of Collis P. Huntington, on the same day:

47 "Senator MORGAN. I will read to you a portion of the statement made by you before the Senate Committee on Pacific Railroads on the 6th of February, 1894:

"Senator MORGAN. Who owns the Central Pacific now?

"Mr. HUNTINGTON. It belongs to a great number of shareholders; there are so many of them that I do not know who they are; I suppose there are 25,000 of them altogether."

Mr. McCLENNEN. Also Appendix, page 141, original hearing, page 203, from the same testimony on the same day:

"Senator MORGAN. You had stock in the Southern Pacific (the Kentucky company) to the amount of probably \$10,000,000?

"Mr. HUNTINGTON. No; I do not know how much I had.

"Senator MORGAN. And in the Central Pacific you had none at all?

"Mr. HUNTINGTON. Oh, yes; I had some. I always had stock in Central Pacific.

"Senator MORGAN. How much?

"Mr. HUNTINGTON. Four or five thousand shares."

Mr. McCLENNEN. Also Appendix, page 143, original hearing, page 8, testimony of Mr. Huntington the same day:

"Mr. HUNTINGTON. Yes. It competes with it like all the other, but not to the same extent. The great through tonnage which is picked up is west of the Alleghanies."

Mr. McCLENNEN. Also Appendix, page 146, original hearing, page 208, testimony of Collis P. Huntington, February 1896:

"I will ask you, preliminarily, Mr. Huntington, to state as nearly you can the exact amount of stock which you now own in the Central Pacific Railroad.

"Mr. HUNTINGTON. I stated, I think, that I owned over 6,000 shares.

"Senator MORGAN. Representing in face value over \$600,000?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. What is the largest amount of stock in that railroad which you have ever owned?

"Mr. HUNTINGTON. I do not know that I have ever owned more than that. I had an interest in the Contract and Finance Company.

"Senator MORGAN. You do not think that you have ever personally owned more than \$600,000 of this stock?

"Mr. HUNTINGTON. I never had more than that standing in my name. I am not prepared to say that I had ever so much as it.

"Senator MORGAN. What was the largest amount you owned at any time, or that you had a right to, as a member of the Contract and Finance Company?

"Mr. HUNTINGTON. I do not know. Mr. Hopkins kept all his accounts; he was the bookkeeper of the concern, and whatever I said always went with me. I never saw the books of the Contract and Finance Company.

"Senator MORGAN. Were all the memoranda of the ownership of stock and the distribution of the stock of each stockholder in the Contract and Finance Company kept on the books of that company?

"Mr. HUNTINGTON. I think so. The Central Pacific stock was largely, and the debts of the Contract and Finance Company

were paid out of the proceeds of the sale, so that it did not really come into my hands.

" Senator MORGAN. Was there ever any distribution of the assets of the Contract and Finance Company?

"MR. HUNTINGTON. Yes.

"**SENATOR MORGAN.** When was that made?

"Mr. HUNTINGTON. I do not recollect the date. I should say along in the seventies.

" Senator MORGAN. Did that include a distribution of the bonds and stock of the Central Pacific Company?

"Mr. HUNTINGTON. There was no distribution. They were sold to pay the debts of the Contract and Finance Company, which debts were incurred, according to my recollection, by the building of the Central Pacific road.

" Senator MORGAN. And out of their sale the Contract and Finance Company paid its debts?

"Mr. Huntington. Yes."

Mr. McCLENNEN. Also appendix, page 155, original hearing, page 217, testimony of Mr. Huntington on the same day:

" Senator MORGAN. At the time of the completion of the Central Pacific road in the manner you have described, how much did the Contract and Finance Company owe?

"Mr. Huntington, I do not know.

"**Senator MORGAN.** About how much?

"Mr. HUNTINGTON. I do not know how much, but it was in the millions.

"Senator MORGAN. Two or three or four millions?

"MR. HUNTINGTON. A good deal more than that.

"Senator MORGAN. Five or six or seven or eight millions?

"Mr. HUNTINGTON. I can not say. My impression is that the Contract and Finance Company owed considerably more than \$10,000,000.

" Senator MORGAN. Has that all been paid?

"MR. HUNTINGTON. It has been all paid.

51 "Senator MORGAN. How?

"Mr. HUNTINGTON. By selling what we had to sell; but mostly shares of the Central Pacific."

Mr. McCLENEN. Also appendix, page 159, original hearing, page 221. Mr. Huntington's testimony on the same day:

" Senator MORGAN. So that we will commence now in 1870 when the road was in full operation. What was the stock of the Central Pacific worth in 1870?

"Mr. HUNTINGTON. I do not know. The stock could have been sold for 10 cents I know, in 1869.

"**Senator MORGAN.** It then had not gone into operation?"

"Mr. HUNTINGTON. Yes; it went into operation on the 10th of May, 1869.

"Senator MORGAN. Between 1870 and 1880 was there not a rapid increase in the value of the stock?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. How did it go?

"Mr. HUNTINGTON. I think between 70 and 80. I think I sold mine at 85."

Mr. McCLENNEN. Also appendix, page 232, original hearing, page 14, the testimony of Mr. Huntington, March 6, 1896:

"Senator MORGAN. There was only about sixty millions of stock of the Central Pacific issued in all?

"Mr. HUNTINGTON. That was all at that time.

"Senator MORGAN. And you had all of that except a little margin—a little fringe—you four?

"Mr. HUNTINGTON. We had a very large majority of the stock. I am the Contract and Finance Company.

"Senator MORGAN. These shares commenced to appreciate, and appreciated rapidly while the dividends were being paid, did they not?

"Mr. HUNTINGTON. They appreciated. That would be the natural effect.

"Senator MORGAN. You say, 'We carried the shares until they began to appreciate, and then we commenced selling them'?

"Mr. HUNTINGTON. Yes.

"Senator MORGAN. Why did you commence selling shares when they began to appreciate and when they were paying such heavy dividends?

"Mr. HUNTINGTON. Because we were owing money."

Mr. McCLENNEN. Also appendix, page 277, original hearing, page 14, the testimony of Mr. Huntington, March 7, 1896:

"Senator MORGAN. I thought you made the most of it by paying off debts. What is the largest amount of stock that you ever owned in the Central Pacific at any time?

"Mr. HUNTINGTON. I never owned very much. I owned some stock in the Contract and Finance Company.

"Senator MORGAN. I am talking about the Central Pacific Company.

"Mr. HUNTINGTON. I would not be positive that I ever had more than a couple of thousand shares.

"Senator MORGAN. You have 6,000 shares now.

"Mr. HUNTINGTON. I was thinking about old times.

"Senator MORGAN. Two thousand shares is about all you owned?

"Mr. HUNTINGTON. Until a long time after.

"Senator MORGAN. When did you become the owner of 6,000 shares?

"Mr. HUNTINGTON. I do not know. It may have been that the Contract and Finance Company may have distributed the shares of the Central Pacific that it owned. The Contract and Finance Company got money and paid all its debts, and it may have distributed some shares.

"Senator MORGAN. Did you say that the 6,000 shares which you now own were distributed to you by the Contract and Finance Company?

"Mr. HUNTINGTON. They may have been.

"Senator MORGAN. Have you ever bought any of the Central Pacific in the market?

"Mr. HUNTINGTON. I do not believe I have."

54 JAMES C. LINCOLN was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. ORR:

Q. Just state on the record your name, place of residence, and occupation.

A. My name is James C. Lincoln; residence, New York City; occupation, manager of the traffic bureau of the Merchants' Association of New York.

Q. How long have you been manager of that?

A. Since 1912.

Q. What railroad experience have you had, and in what departments of service?

A. I have had a somewhat extended railroad experience in practically all of the departments.

Q. Commencing at what time, and give in a general way what your experience has been, and what positions you have occupied.

A. I entered the railway service in September, 1876, with what was then known as the St. Joseph & Denver City Railroad. My first service was somewhat of a general utility boy around the general office. I was connected with the car-service department, and from that went into the transportation department; was chief clerk in the general freight and passenger department, and at the time I left the service of the St. Joseph & Grand Island, as it was then known, in 1888, I was the chief clerk in the general freight and passenger department of that line.

In September, 1888, I went to Atchison, Kansas, as commercial agent of the Missouri Pacific Railroad Company, in charge of the central branch and the western extension divisions. In the fall of 1889—as I recall it, it was in November, 1889—I was called to the

quarters of the Missouri Pacific in St. Louis, and on the 1st of January, 1890, I was made assistant general freight agent. I remained with that company from 1890 to 1905, occupying the positions, respectively, of assistant general freight agent, first assistant general freight agent, general freight agent, and at the time I left assistant freight traffic manager.

Q. Then where did you go?

A. When I left the Missouri Pacific I went with the Merchants' Exchange of St. Louis as commissioner in charge of its traffic bureau. I remained with that organization from May, 1905, until May 1912, when I came to New York to take charge of the traffic bureau here.

Q. In a general way, what are your duties in your present position?

A. My duties in my present position are to look after the question of rates, rules, and regulations as applied to the shipping public by the carriers, and to look after particularly and see that New York is not discriminated against in the matter of rates, and to see that no unjust burdens are placed upon the shippers of this community in the way of rules and regulations. The position is largely that of—well, a "go-between" between the railroads and the shipping public, and to bring about the best of feeling, so that they may better understand each other.

Q. Are you acquainted with the system of railroads managed or controlled by the Southern Pacific Company—the general plan?

A. Why, no—in a very general sort of way. The railroads of the West, yes. I would not say now that I could recall with particular reference to the change from "railroad" to "railway" and the different organizations.

Q. I did not mean the different constituent lines; I meant the general plan.

A. Yes.

Q. Do you know especially where the Central Pacific Railway operates its lines?

A. From Ogden to San Francisco, Sacramento and San Francisco.

Q. Are you acquainted with the transportation line known as the "Sunset"?

A. Yes.

Q. Where does that operate?

A. What is known as the "Sunset Route" operates from New Orleans to San Francisco.

Q. Does it do so in connection with any water line—water service?

A. The Morgan Line, owned by the Southern Pacific Company, enjoys what is known as the "Sunset Route" out of New York to San Francisco and Pacific coast points.

Q. Does the "Sunset" have an all-rail line from San Francisco to New Orleans?

A. What is known or what I would designate as the Southern Pacific has an all-rail line from New Orleans and Galveston to Pacific coast points.

Q. It handles transcontinental traffic, does it, by rail and water?

58 A. From New York and seaboard territory, and it handles business by water to New Orleans and thence by rail to the Pacific coast.

Q. Could you make some statement as to the length of time the Southern Pacific Company, to your knowledge, has operated that transcontinental line, rail and water line?

A. I could not go back and establish a definite date. It has been a very long time that the Morgan Line and the Southern Pacific Company have engaged in transcontinental business.

Q. Has the Southern Pacific Company also a rail connection to New York from New Orleans?

A. It has no rail connection that it owns. Of course, there are rail lines operated from New York to New Orleans. They can operate in connection with them.

Q. It makes a through route that way?

A. There are through routes from New York via New Orleans to the Pacific coast. The Southern Railway and its connections, the L & N. and the Atlantic Coast Line and connections; they are practical routes.

Q. I will get you to state whether there is a possible all-rail transcontinental line over the Central Pacific and the Union Pacific and eastern connections from San Francisco to the Atlantic seaboard.

59 A. The more direct route from New York to San Francisco would be through the Chicago and Mississippi River gateway, through trunk lines from New York, such as the Pennsylvania and the New York Central lines, those two lines in particular. Also the Wabash line serving Chicago and St. Louis and thence west over the lines operated from Chicago to the Missouri River, and the Union Pacific from Omaha or Kansas City through Ogden to San Francisco.

Q. The Union Pacific from Omaha or Kansas City would operate in connection with what line from Ogden west?

A. They would operate to San Francisco with the Central Pacific.

Q. I will get you to state, in your opinion, from the experience you have had and your acquaintance with railroads and with transcontinental lines, whether the Southern Pacific Company, as you have

scribed it, and the Central Pacific Railway Company with its eastern connections, are competitive systems for transcontinental business.

A. They are competitive systems. The degree of competition, of course, is dependent upon the territory of origin of the business.

Q. Take a shipment of wool from the west coast to the east coast. How could that naturally and practicably be transported?

A. California wool could move by the Sunset route, or it could move—speaking now of the Southern Pacific lines—from Ogden to the Missouri River gateway through Omaha and Kansas City. The north Pacific coast wool, I would not say would move to any great extent by water routes; it would go through the northern gateways.

Q. What are the wool markets on the Atlantic coast or near the Atlantic coast?

A. Boston, in New England, is the great wool market.

Q. How about the movement of hops from the west coast, transcontinental?

A. The California hops move largely by rail. They move in part by rail and water.

Q. Are you acquainted with what has been known—as a traffic line—as the dead line running north and south, say east of Buffalo and Pittsburgh and Toronto and as far south as the Ohio River?

A. I do not believe I comprehend that term as applied to transcontinental business. I do not believe I understand the term.

Q. What is the Atlantic seaboard territory that is handled or influenced or controlled by the Southern Pacific Company as applied to transcontinental business?

Mr. BLAIR. He did not say there was any Atlantic seaboard territory influenced or controlled by the Southern Pacific Company as applied to transcontinental business.

Mr. ORR. I am just going to ask him to say so.

Mr. DUNNE. Then we will object to the form of the question as incompetent and calling for a conclusion of the witness and without foundation. I think you ought to reframe it.

Mr. ORR. Well, I may later; but I will let him answer this one.

The WITNESS. The Atlantic seaboard territory, as applied to transcontinental business, is the territory which lies east of Buffalo, Pittsburgh, and Cleveland, and north of the Ohio and Potomac Rivers. It is in that territory that through rates apply from and to Pacific points, the rates being the same by Chicago, St. Louis, and the Missouri River gateways, and the same by the Gulf ports. It is in this territory that the Morgan Line operates traffic through the port of New York; that is, they can reach as far south as Pittsburgh and

draw the business into New York, and then going on to the Pacific coast by the Gulf ports, and that is the territory of competition between the all-rail lines and the rail and water lines on Pacific coast traffic.

By Mr. ORR:

Q. On tonnage originating within the territory you have just described, to be transported to the Pacific coast, we will say, by the Southern Pacific Company, what becomes of the local rate from the point of shipment to New York?

A. The local rate from point of shipment to New York is absorbed in the through rate. I want to qualify that statement by saying that there are some rates which are made from New York to Pacific coast terminals that only apply from the port of New York.

Q. That is on the higher classes?

A. On the very low classes, the very low rated commodities.

Q. To your knowledge and from your experience, what transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?

Mr. BLAIR. He has not said that he knows, and he has not said that any company dominates it, so I object to the form of the question as leading, improper in form, and suggestive.

Mr. ORR. After the word "what" add "if any."

63 Mr. DUNNE. I would like to have the reporter read that question now.

(The reporter read the question as amended, as follows:)

"To your knowledge and from your experience, what, if any, transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?"

Mr. BLAIR. Counsel has added the words "if any", and it was not in the same form as when the objection was made. It makes it appear that the question was as now read.

Mr. DUNNE. I think the record ought to show. There is no foundation in this record, or any knowledge on the part of this witness, as to the percentage of tonnage originating in seaboard territory which goes by any particular carrier, whether all-rail or rail and water, and the proper way to examine him would be to ascertain if he has any knowledge of the respective percentages originating in that territory tributary to the different carriers, served by the different carriers.

(The question was again read by the reporter.)

64 The WITNESS. If you are speaking of the present time, I would not say that any particular company could dominate the situation as to rates to the Pacific coast. Of course the Southern Pacific

Company, by reason of its extensive lines in California, would and should receive consideration at the other hands in the adjustment

times. A very different situation exists today from what existed prior even to 1910.

Q. Take the condition as it was; are you acquainted with the conditions as they existed prior to 1901?

A. Yes; I am—

Q. I mean on this rate situation—this traffic situation—in the territory you have described on transcontinental traffic?

A. It is my recollection that it was about 1901, or possibly 1902, that the Union Pacific influence over the Southern Pacific came into existence. As to the time prior to 1901, that, by reason of my official connection with the Missouri Pacific, I was quite familiar with at that time.

Q. What was the situation at that time, if you know, as to what influence or what companies dominated—controlled—the traffic in the territory you have described?

Mr. BLAIR. Counsel objects to the form of the question as leading and suggestive. The witness has not testified that any company dominated or controlled the traffic referred to.

By Mr. ORR:

Q. Go ahead.

A. Prior to 1901 the Southern Pacific Company was the dominating factor in adjusting rates to the Pacific coast. That is very logical and very probable by reason of the territory covered by their rails.

Mr. DUNNE. We move to strike the answer out as not responsive to the question.

By Mr. ORR:

Q. I will ask you to state whether you have knowledge of the conditions prevailing prior to 1901 as to what particular company or transportation company practically controlled the rate?

Mr. BLAIR. Counsel objects and protests against the form of the question as leading and suggestive, the question embodying or implying a statement of conditions about which the witness has not testified.

Mr. ORR. I have asked him the question whether he has knowledge of it.

Mr. BLAIR. He has not stated that any railroad dominated the situation.

Mr. ORR. The question, Judge, if you will listen to it, makes that inquiry. It is answerable yes or no.

Mr. BLAIR. So is every suggestive and leading question answerable yes or no.

(The pending question was read by the stenographer.)

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By Mr. ORR:

Q. The question is, have you a knowledge as to what company did control it. That could be answered by yes or no.

A. I have knowledge; yes, sir.

Q. You may state what company it was, or what companies, if more than one, that controlled that rate.

A. At that time the rates to California were controlled by the Southern Pacific and the Santa Fe Companies.

Q. Have you knowledge of the manner in which the tonnage was solicited by the Southern Pacific Company and its soliciting agents for transcontinental traffic, both from the west coast to the East and from the East to the West, prior to 1901?

A. Prior to 1901 California traffic from the seaboard territory was solicited by the Gulf route—water line to New Orleans or Galveston, and the Southern Pacific beyond.

Q. Is that what you have referred to at times as the Sunset Route?

A. Yes; what was known as the Sunset Route.

Q. In taking that route would any part of the traffic pass over the Union Pacific and Central Pacific Railroads?

A. It would not.

Q. Do you know the conditions prevailing in respect of 68 transcontinental traffic from the territory you have described from 1901 to 1913, or any part of that period?

A. Oh, a changed condition was brought about after the close relations between the Union and Central and Southern Pacific lines in the Union and Southern Pacific systems, and from the territory in the Middle West which is called the C. F. A. territory, and from a part of the trunk line territory, business moved more freely, and through the Omaha gateway, than was true prior to 1901.

Q. Since the "unmerging", as we will call it, of the Southern Pacific and Union Pacific Companies, have you knowledge of the conditions in respect of which you have just testified?

A. Do you mean the last change that was made?

Q. Yes.

A. I would not desire to speak authoritatively on that point. I have not been in the railway business, have not been looking after the business of the coast, since about 1912.

Q. Within your knowledge and experience, within your experience and knowledge of the situation, as far as you are able to state 69 as to the conditions of traffic as it proceeds, we will say, westward from the Atlantic coast, what territory is covered by the Southern Pacific competition—active solicitation?

A. I could not answer that question with authority as to to-day. I can answer it as to the time when I was in the railroad business.

Q. Yes.

A. And when I was soliciting business and trying to get business  
the Missouri Pacific Company.

Mr. DUNNE. What years do you have in mind?

The WITNESS. Well, up to 1906—1905—and prior to 1900 or 1901,  
in that period of time the Southern Pacific Company was  
more or less active in the solicitation of California business in the  
territory—well, with the Central in Missouri and to some extent at  
points on the Ohio River, points in Ohio and Indiana. That I know,  
in my official capacity with the Missouri Pacific I would  
be in contact with the competition in that territory. The Missouri  
Pacific, you understand, was trying to get business by way of Denver,  
by way of Pueblo, I should state, and Ogden, and the Central  
Pacific, or by way of Texarkana and El Paso, and we had the com-  
petition of the Southern Pacific in the territory of St. Louis  
and east thereof, and in Ohio and Indiana and in what is  
known as trunk-line territory.

By Mr. ORR:

Q. Business solicited by the agents of the Southern Pacific Com-  
pany in the territories you have just mentioned, if the Southern  
Pacific Company secured the business, which way was it routed and  
what?

A. Well, part of it went over the Illinois Central into New Orleans  
and thence west.

Q. Over the Sunset Route?

A. Over the Sunset line.

Q. Over the Southern Pacific, you mean?

A. The Southern Pacific. A part of it would move over the  
I. M. & T., and in that territory, and thence over the Southern  
Pacific; some of it by way of the Cotton Belt and thence over the  
Southern Pacific; or, in other words, the Southern Pacific lines  
solicited absolutely the business by way of New Orleans; in territory  
south of the Ohio River and along the Ohio River they solicited  
business by way of Memphis and the New Orleans gateway. From  
points north of the Ohio River and from points in what  
is known as Central Freight Association territory and east of  
the Mississippi River, the New Orleans route being longer, they  
would operate by other gateways, and they undertook to solicit the  
business for the more direct route, and worked with the lines that  
might have an edge on the business in that territory in which it  
originated. They even worked with the Iron Mountain, so far as  
that is concerned.

Q. Would any part of it be sent by way of the Union Pacific and  
Central Pacific?

A. Southern Pacific solicitors would not be soliciting business to  
by way of Omaha and the Ogden gateway; that is, prior to 1901.

Q. Yes. Now, you say it would go by way of New Orleans. Why did they send it that way?

A. It is a long haul.

Q. They got the longest haul out of it by sending it by way of New Orleans?

A. By way of New Orleans.

Q. They could have sent some of it by the Rock Island to El Paso, could they not?

A. Yes; they could have sent some of it that way, or they could have moved it by other lines to El Paso—the Iron Mountain 72 and T. P.

Q. Are you familiar with the route from Kansas City by the Orient to Alpine, Texas?

A. No; I am not. It has been constructed since I left that territory.

Q. I believe you testified to the conditions up to 1901.

A. Yes.

Q. What, if any, change was there, or what changes were there in the situation from 1901 to 1906, to your knowledge?

A. When the solicitation of California business for the Missouri Pacific System and the D. & R. G. began we found there was a tendency on the part of the Southern to give the business to the Union Pacific, so as to get the long haul from California to Omaha or to Kansas City. It made necessary a very active solicitation of business in California to secure the routing by Omaha, D. & R. G., and Union Pacific, and at no time were our routings cancelled through the Alpine gateway on California business.

Q. During the period extending from 1901 to the spring or the early part of 1913 had you ever known of solicitors of the Southern

73 Pacific, or solicitors for the Southern Pacific, soliciting transcontinental freight, or freight destined to the Pacific coast to go over the Central Pacific?

A. After the consolidation, as I call it, of the Union Pacific—

Q. No; the question is except during the period from 1901 to 1913.

Mr. BLAIR. He has testified that he did not know anything about the conditions since 1912, so that the question goes further forward than his information extends.

By Mr. ORR:

Q. Let me ask that question again. I do not think you understood it.

I say, except during the period from 1901 to 1913, except during that period, have you ever known of the Southern Pacific being solicitors of Pacific freight over the Central Pacific?

A. No. That means the territory prior to 1901.

Mr. BLAIR. What is that answer?

(The stenographer read the last answer of the witness, as follows:)

“A. No. That means the territory prior to 1901.”

The WITNESS. That means the time prior to 1901, I mean. He has brought it up to the present date—1913.

By Mr. ORR:

Q. The Southern Pacific Company, you say, operates a part of its transcontinental line by steamboats. Are you acquainted with the storage arrangements in New York City which that company has or have for the accommodation of shippers?

A. On their business from California, brought into New York my impression is that they allow about fourteen days' free time for every storage period. That is easy to be found by an examination of the tariffs.

Q. That is an arrangement for free storage for a period of fourteen days, is it?

A. They give the shippers fourteen days to remove their freight from the pier on California business.

Q. Whether a man wants to reconsign his freight, or whatever position he wants to make of it makes no difference; is that right?

A. That is my understanding; he has fourteen days to move it.

Q. Is there any transcontinental all-rail route which has any such storage arrangement in New York City?

A. There is not.

Q. You may state whether or not, in your opinion, the free-storage arrangement of the Southern Pacific, fourteen days' free time, is an inducement, or an added inducement, for shippers to use that route?

A. It would be for some.

Q. Yes.

A. For some who wish to avail themselves of the opportunity of shipping.

Q. What are the requirements about removing shipments from cars? How much free time is allowed?

Mr. BLAIR. Counsel objects to the evident attempt to prove by witness the conditions and terms which appear in the written tariffs, and must appear in the written tariffs of the railroad companies parties thereto, on the ground that the best evidence is the tariffs themselves.

By Mr. ORR:

Q. You may answer.

A. The rule in New York City on shipments arriving by the all-routes from the west is that the property shall be removed—

this is on package freight—from the pier or station within 72 hours. In the case of carload freight, which is tendered for delivery on private tracks, within 48 hours thereafter demurrage will begin to accrue. In case of boat delivery stations it is sent to the public warehouse at the end of 72 hours.

76 A different rule prevails on business arriving by the boat lines. That is not confined exclusively to Pacific business. A different arrangement prevails on goods arriving by boat lines.

Mr. BLAIR. These rules are all in the printed tariffs, are they not?

The WITNESS. They should be in the printed tariffs.

Mr. BLAIR. They are of no force if they are not?

The WITNESS. I assume not.

By Mr. ORR:

Q. Are you acquainted with the effects of closing any of these particular gateways that you have mentioned or have not mentioned? Did you describe what the general effect would be; for instance, the closing of the Ogden gateway by the Union Pacific. what is the effect of that?

A. If the Ogden gateway were closed?

Q. Yes.

A. By the Union Pacific?

Q. Yes.

A. I don't believe I understand.

Q. What traffic does it influence or control?

A. You are speaking of the Union Pacific on transcontinental business?

77 Q. On transcontinental business.

A. As controlling the Central Pacific?

Q. No; as to the effect of its closing the gateway. You speak of closing a gateway. What does that mean?

A. Well, Ogden is the gateway from the East to the Pacific coast.

Q. Yes.

A. And the Central Pacific Railroad was the connection of the Union Pacific and the Rio Grande Western, serving that territory. If the Central Pacific were to cancel out its through rates and percentage arrangement with the Rio Grande Western Railroad, in railway parlance that would be termed as closing a gateway; or, as has been done in the case of handling lumber to the Northwest, the Great Northern through routes and joint rates had prevailed by certain junction points in the interior, and with the cancellation of such joint rates that went out and closed that gateway. There are various through rates in effect by Newport News, by Savannah, and by Norfolk. They are all supposed to be gateway points. If the through rate is cancelled by one of those routes, and the through

and through route that previously had been in effect was cancelled, that gateway would be closed.

Q. Would that mean that the rate would be quoted only to that gateway?

A. It could only move then on the combination of locals to and from that gateway, and ordinarily the closing of a gateway precludes moving of business through that gateway.

Q. That would apply to the closing of any other gateway?

A. It would cancel out the through rate and divisions through one junction point by one road, and permit such through routes and joint rates and divisions to operate through another route. Of course, as to one line, the gateway is closed to it.

Mr. ORR. You may cross-examine, if you desire to.

(Thereupon, at 4.30 o'clock p. m., an adjournment was taken until tomorrow, September 22, 1914, at 10.30 o'clock a. m.)

#### SECOND DAY.

ROOM 720, CUSTOM HOUSE,  
New York City, September 22, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClenen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne for the Southern Pacific Company, et al., and Mr. Trafalgar for the Union Trust Company of New York.

JAMES C. LINCOLN, the witness under examination at the taking of adjournment, resumed the stand for further examination.

Cross-examination by Mr. BLAIR:

Q. Mr. Lincoln, I want to direct your attention to the transcontinental lines and traffic conditions existing at the time of the merger, and just before the time of the merger, in 1901, of the Union Pacific and the Southern Pacific. If a man at that time had goods that he wished to ship, say, from points in northern and central California to the Atlantic seaboard, what different routes or through lines were open to him? Name, say, the all-rail lines.

A. You mean—

Q. (Interposing.) I mean, say, northeast of the Tehachapi Mountains or north of a line drawn through Mojave and Santa Barbara.

A. They had, at that time, in going to this eastern territory—

Q. (Interposing.) To the Atlantic seaboard.

A. To the Atlantic seaboard we had the lines of the Central Pacific to Ogden and thence from Ogden to Omaha over the Union

Pacific or to Kansas City over the Union Pacific or from Ogden over the Rio Grande Western and D. & R. G. to Pueblo, Denver, or Colorado Springs, there connecting with the C., B. & Q., the C., R. I. & P., the Missouri Pacific—

Q. We know what is meant by those initials, but probably the court which reads your testimony would not know.

A. Connecting at the Colorado common points with the Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Missouri Pacific; and the Atchison, Topeka & Santa Fe; at Omaha and Kansas City the connections of the Ogden gateway were the various lines operating between Omaha and Chicago, Kansas City and Chicago, or Omaha and St. Louis or Kansas City and St. Louis, or Mississippi River crossings. Do you want me to enumerate those lines?

Q. No; I suppose the Chicago & North Western—

A. (Interposing.) The Rock Island, North Western, Chicago & Great Western, and numerous other lines.

Q. They reached as far as St. Louis and Chicago?

A. Then from Chicago and St. Louis eastward the principal lines were the Pennsylvania, the New York Central, the Baltimore & Ohio and other connections. Of course, there were many other routes—the Wabash in connection with the Grand Trunk or the Clover Leaf in connection with the Lake Shore and various connections. In addition to that there were the routes operating through the Atlantic ports as far south as Newport News or possibly Savannah.

Q. Now, we have had the through route—what we would call the Ogden route—formed by the Central Pacific, the Union Pacific and their eastern connections, and then we have the route via the Denver & Rio Grande, formed by the Central Pacific, the Denver & Rio Grande, and its eastern connections?

A. Yes.

Q. What others?

A. Of course, operating through the Ogden gateway there were various joint through routes, like the M., K. & T., operating in connection with the Union Pacific through Junction City; the St. Louis & San Francisco, operating in connection with the Union Pacific through Ellsworth, Kansas; and the Frisco also had connections with the Santa Fe at the junction point in Kansas. But there were a host of lines that could be made up intermediate with the gateways or beyond the gateways.

Then there was the line—speaking now of the Southern Pacific connections—

Q. I asked you as to all the lines that were available to man who wanted to ship goods from northern and central California points to the Atlantic seaboard.

A. There was the Southern Pacific Line, then, coming through from California territory, operating through Galveston and New Orleans, giving them their long haul, and thence via the Morgan or Mallory Lines. The Southern Pacific also operated in connection with the Texas Pacific via El Paso; it operated in connection with the Rock Island Railroad—I would not say as to just what date the Rock Island was able to reach that territory; they did not get to El Paso, I think, until later than 1901; but the Southern Pacific had connections with the M., K. & T. through—I think the interchange was made through Dennison; I am not positive of that point; I mean the M., K. & T. came down to Dennison, connecting with the Southern Pacific.

In addition, there was the Santa Fe route from California, with lines through to Kansas City and even through to Chicago.

Q. It reached San Francisco?

A. It reached San Francisco; yes.

Q. And had a through line to Kansas City?

A. And had a through line to Kansas City and Chicago.

Q. Did they not also form a line to Galveston and thence by the Mallory Steamship Line to New York?

A. They also had a line through Galveston and the Mallory. I believe they also operated in connection with the Morgan—

Q. But principally with the Mallory?

A. Principally with the Mallory, naturally.

Then, from that California territory there is the other gateway, through Portland and the northern route to reach the eastern seaboard territory. I am referring to connection with the Great Northern and Northern Pacific.

Q. All these lines or routes which you have mentioned were open to shipper of goods between the territories I have mentioned?

A. Yes, sir.

Q. The rates were practically the same by all?

A. They were the same by all; the tariff rates were the same by all; yes.

Q. Now, the traffic passing between Atlantic seaboard territory and points in northern and central California were large and important at that time, were they not?

A. Very large.

Q. It was actively and vigorously sought after by these different lines!

A. The seaboard California business was actively sought after by the lines.

Q. Did the eastern connections of the Union Pacific, forming part of this Ogden route, maintain soliciting agents on the coast at that time?

A. As to the trunk lines operating out of New York, I do not know that they all had soliciting agents on the coast at that time.

Q. The New York Central had, had they not?

A. You are going back now fourteen years; I can not recall with definiteness as to representations. The lines operating from Chicago and the Mississippi River westward had representation.

Q. Such as the Chicago & Northwestern?

A. The Chicago and Northwestern. I am inclined to believe that the principal lines, like the Pennsylvania and the New York Central, had agents. I know there was a very large soliciting force in California representing the different lines.

Q. The Union Pacific had soliciting agents on the coast?

A. Oh, yes.

Q. And the Denver and Rio Grande?

A. Yes.

Q. And the Santa Fe?

A. Yes.

Q. And the Missouri Pacific?

A. Part of the time separately and part of the time with the Denver and Rio Grande.

Q. Over what route did the Union Pacific and its eastern connections solicit the routing of freight?

A. The Union Pacific solicited the routing of business via Ogden.

Q. And so did its eastern connections?

A. Its eastern connections, in working with the Union Pacific road, would solicit for the movement by Omaha or Kansas City. Of course the eastern connections were also cooperating, working with other routes, from the Missouri River.

87 Q. Were there not eastern connections which were closely affiliated and in sympathy with the Union Pacific line?

A. I would say that during that period, as representing the Missouri Pacific, that certain lines were more closely affiliated to the Union Pacific than to the Missouri Pacific.

Q. Working for the Missouri Pacific you worked for the Denver and Rio Grande?

A. I worked for the Denver and Rio Grande business to Ogden.

Q. And its eastern connections, more closely connected with the Union Pacific Company, worked for the Ogden route?

A. Well, we felt that some of them were a little more loyal to the Union Pacific at that time than the Missouri Pacific. Of course there were connections with the Missouri Pacific, such as the Rock Island.

Q. How did they show that sympathy?

A. We felt there was a larger proportion of business going through the Omaha gateway, through the influence of the old tripartite, the

Chicago, Rock Island & Pacific, the Chicago, Milwaukee and St. Paul and the Chicago & Northwestern. We felt those lines were operating more strongly with the Union Pacific than they did with the Missouri Pacific, although the Missouri Pacific was also 88 a connection of those lines.

Q. So that the agents of these different through lines, for the traffic to which I have referred, were striving at that time each to secure the traffic for its own through line?

A. The representatives of each line tried to get the business for its own line.

Q. So, when the agents of the Southern Pacific were seeking to secure the traffic I have mentioned for the Sunset Route the agents of the other lines were trying to get it for their lines?

A. They certainly were.

Q. Which was the strongest of those all-rail lines at that time?

A. From what territory?

Q. Northern and central California points to the Atlantic seaboard.

A. The Southern Pacific was the strongest.

Q. I asked which was the strongest of the all-rail lines?

A. The Central Pacific, Southern Pacific, and Union Pacific I would consider the strongest rail line operated to and from 88 California points on business all rail to and from the Central Freight Association and Trunk Line territory.

Q. The Central Freight Association includes what territory?

A. The Central Freight Association included the territory west of Pittsburgh, Cleveland, and Buffalo, and east of Chicago and St. Louis, north of the Ohio River.

Q. By strongest, I suppose you mean it was the most powerful bidder for that traffic?

A. It was the most direct line.

Q. And it secured the most of the traffic?

A. To San Francisco, yes. I would not say that it was as strong at Los Angeles as the lines operating through the El Paso gateway.

Q. Los Angeles would not be included in northern and central California.

A. I know that.

Q. I asked you to qualify it as to northern and central California.

A. Very well.

Q. So that as to northern and central California, in this scramble for the traffic I have mentioned, the Ogden route was the most successful bidder?

90 A. Of the all-rail roads?

Q. Of the all-rail roads.

A. Yes.

Q. Have you ever made up any percentages of the entire volume of traffic passing between the territories I have mentioned, so as to be able to know what percentage passed by any of these different routes?

A. I cannot recall any figures. We had those percentages in the earlier days of the business moving into California by the different gateways and different lines.

Q. At that time the American-Hawaiian Line, which now operates through the Isthmus of Tehuantepec, was not in existence?

A. No; prior to 1901 it was not in existence.

Q. I am informed that very recently the American-Hawaiian Line goes through the Panama Canal.

A. It has now diverted its route to operate through the Panama Canal.

Q. Prior to the opening of the Panama Canal it operated through Tehuantepec?

A. Through Tehuantepec. I do not know the date of that opening.

91 Q. It was not in existence in the period we are talking about, 1901 and prior thereto?

A. It is my impression it was not.

Q. In your direct examination yesterday you were asked this question, and you answered, at page 59, as follows:

"I will get you to state, in your opinion, from the experience you have had and your acquaintance with railroads and with transcontinental lines, whether the Southern Pacific Company, as you have described it, and the Central Pacific Railway Company with its eastern connections, are competitive systems for transcontinental business?"

"A. They are competitive systems. The degree of competition, of course, is dependent upon the territory of origin of the business."

Do you mean any more by your answer than this, that the through line formed by the Central Pacific and the Union Pacific and their eastern connections, form an alternative or competitive route with the through line formed by the Southern Pacific lines to Galveston or New Orleans and thence by the Morgan Line to New York?

A. Answering the question there, I would say that the two routes are competitive with each other.

Q. That is what you meant by your answer yesterday?

92 A. I meant that by my answer yesterday, but the question of yesterday was much broader than the question of to-day. Yesterday it was with reference to the entire California traffic, whereas your questions so far have referred to the upper California traffic.

Q. Well, then, your answer yesterday means that as to all through transcontinental business which might pass over and reach its destination either by the through route formed by the Central Pacific and the Union Pacific and its eastern connections or by the route known as the Sunset-California route; that is, with respect to all such traffic those two routes form alternative or competitive routes?

A. They do.

Q. That is what you meant by saying that the Central Pacific Railway Company's system and its eastern connections was competitive with the Southern Pacific system?

A. It is competitive.

Q. Do you mean to say that those two through routes were simply theoretically competitive, or were they actually competitive?

A. Actually competitive.

Q. In your testimony yesterday you spoke of an allowance of fourteen days free storage by the Sunset-Gulf Route. Is it not a fact that the all-rail lines allow ten days free storage on the Jersey side and three days on the New York side, and do not count the day of arrival and delivery?

A. On carload business there is ten days allowed on the Jersey side for disposition and reconsignment instruction, delivery not yet having been tendered; held there free for orders. But after it is placed at pier or freight station for unloading, the time is set at two hours for removal of the property from the pier or station.

Q. Then they do get ten plus three days?

A. Yes.

Q. Without counting the day of arrival?

Q. Without counting the day of arrival, on carload freight that is not consigned direct to a delivery point, and has not been suspended while in course of transportation.

Redirect examination by Mr. ORR:

Q. In your cross-examination you described certain or several transcontinental routes handling the business, and you were asked whether each and all of those routes were actively, through the time you have described, competing for that business, soliciting the business. Do you know whether the Central Pacific had any such solicitors, independently, at that time?

A. I could not answer that definitely. I have understood that the Southern Pacific representatives represented the whole line. I do not recall that there were separate representatives for the Central Pacific and for the Sunset Route.

Q. The Southern Pacific had very active solicitors for such business, had it?

A. Yes.

Q. Do you know which way they solicited the business to be routed?

A. Why, out of New York seaboard territory, as would 95 be very natural, they solicited the business by the Morgan line, Sunset Route.

Q. And not by the Central Pacific?

A. No. Well, I would like to qualify that to a certain extent; just as it is with all the lines, that their first effort is to secure the business by the route over a line giving the longest haul. If they can not control the business for that line, they may, and frequently do, join with other lines in securing the business so as to get a haul out of it, regardless of distance.

Q. And in that way they always endeavor, if they can not get the best haul, the longest haul, to get the next best and the next longest haul?

A. Those are natural qualifications of a solicitor.

Q. And either the next best, or even the next best after that, would not include a Central Pacific route from Atlantic seaboard territory?

A. Well, I would say that on the seaboard territory practically two routes only are open in the solicitation of business. One would be by Gulf ports, in connection with their water line, and the other would be by Ogden. I am speaking now of upper California; except as to 96 low-class freight, where time is not very much of a feature, it would be my judgment that the Southern Pacific is jeopardizing

their general business by undertaking to get a long rail haul to New Orleans and thence by rail to the seaboard; that is, as to northern California business.

Q. If they did that they would get a longer haul than by going through the Ogden gateway?

A. They would get a longer haul than by going through the Ogden gateway.

Q. And a larger revenue?

A. And a larger revenue.

Q. You spoke of their natural solicitation of business by the water and rail route passing through New Orleans or Galveston. What percentage of the revenue would they get if sent that way?

A. By all-rail through New Orleans?

Q. No; by water to New Orleans and rail to California.

A. If they used the Morgan Line to the Gulf and their rail line beyond, they would get 100 per cent.

Q. Can you estimate the percentage of revenue they would get if sent by Ogden?

A. I could not. I would not undertake to deal with those divisions of rates at this time.

Q. The Union Pacific solicitors naturally sought business of the territory you have described over the Central Pacific and Union Pacific, did they, at that time?

A. If they wanted to participate in the traffic, that is the only way they could solicit—over the Union Pacific by Kansas City and Ogden, or Omaha and Ogden.

Q. And the bulk of the business that went that way came from that solicitation, over that route?

A. No; I would not say that it came through the Union Pacific solicitation entirely.

Q. How would you say it did come?

A. Well, the lines operating from seaboard territory, all-rail, or from Central Freight Association territory to the Mississippi and Missouri Rivers, were soliciting business in competition with the route operating south over the Sunset Route.

Q. You did not understand my question.

(The last three questions and answers were read by the reporter.)

Q. (Continuing.) The point I wanted to make was, or to call your attention to was, the business that went through the Ogden gateway which you have described as moving that way came principally through the Union Pacific solicitation, and not through that of the Central Pacific?

A. The business through the Ogden gateway came through the Union Pacific solicitation, or solicitation of the lines east of the Missouri and Mississippi Rivers.

Recross-examination by Mr. BLAIR:

Q. Do you know, generally, what the conditions now are in regard to the movement of this same class of traffic from northern and central California to the Atlantic seaboard?

A. Oh, I could only speak of that in a mere general superficial way. I am not in the railroad business, but in touch with the movement of traffic.

Q. Do you know enough to answer this question, whether or not the competition for that traffic by the different lines is not as strong now as it was prior to 1901?

A. I do not think it is as strong as it was in 1901 from seaboard territory.

Q. What makes you think that? I am speaking of since the unmerger of the Southern Pacific with the Union Pacific.

A. Well, I only express an opinion based upon a very general knowledge of the situation. I do not feel or believe that the trunk lines are as active in the solicitation of transcontinental business through the Chicago and Mississippi River gateways as they were prior to 1906, or even prior to 1901. There were different conditions

existing at that time than those which exist to-day. I think that quite a large volume of business moves from this seaboard territory to Pacific coast points on the solicitation of the Southern Pacific and on the solicitation that is secured by service; so that it moves by way of the Morgan line and the Southern Pacific by reason of the better service. Service is the solicitor nowadays, and it moves by reason of better service than can be rendered by the all-rail routes to Chicago and the Mississippi River.

Q. According to that, if that theory were correct, the proportion carried by the Sunset-Gulf route now would be greater than the proportion carried in 1901, if your theory were correct?

100 A. From the near-by seaboard territory; that is what I was referring to, yes. I do not feel that to-day the Southern Pacific are going as far away from the seaboard territory in securing business against the all-rail lines as they did at that time; but we have to take into account a different condition existing today from that which existed in 1901.

Q. What are those different conditions?

A. One of the principal differences in condition is rebates. There are no rebates to-day.

Q. So that prevents an indirect all-rail line from getting business as successfully as under the régime of rebates?

A. It certainly does. It prevents them from getting business that they did get in the former days.

Q. So that, say, in 1901, or prior to that time, a railroad going south and then north through the Middle West territory, say, might compete with a direct all-rail line from the coast to the Middle West territory through not observing strictly their tariff?

A. Through accommodations given by way of rebates and otherwise, they secured business that they were really not entitled to.

101 Q. And in the present days of the observance of tariff rates they do not try to get this business by indirect routes?

A. They can not.

Q. But as to the main lines—the Santa Fe, the Ogden route, the Western Pacific, which has come in on the scene since 1901, in connection with the Denver and Rio Grande and the Rock Island combination—they compete as actively now as they did in 1901, do they not?

A. The main lines compete very actively now. They are restricted, as I say—some of the main lines in the territory of competition—by reason of natural conditions and by reason of service. A fair illustration of the competition that existed in 1901 and the competition that exists to-day is this: At one time there was considerable traffic moving through Central Freight Association territory—not

from Chicago proper, but Central Freight Association territory, Ohio and Indiana points—down by way of New Orleans to California points, and I do not believe there is very much of that business moving to-day, because it is too long a line. To-day that business will move for San Francisco through the Missouri River gateways, very largely, and to southern California through the southwestern gateways.

Q. So that you would naturally expect that if, in the early days, the Southern Pacific tried to secure the routing of that traffic via New Orleans, it would now try to secure the routing of the traffic, if it were to participate in it at all, via Ogden?

A. Unless there is some very exceptional business upon which service cuts no figure, they would certainly solicit the business via Ogden. At least that is the only way that is left to them, I think. You have to please the public to-day in service more than in those days.

Q. The public to-day control the routing of traffic; that is, if a shipper gives routing directions, they have to be followed?

A. There is where different conditions prevail to-day from what we did in 1901. The shipper can designate the way his property shall go. In 1901 he could not.

Q. Mr. Lincoln, eliminating this question of rebates and its effect, and the right of the shipper to route, is there anything which would satisfy you in saying that competition is less vigorous between these transcontinental lines now than it was in 1901?

A. Well, I could not answer that as to the actual solicitation of business for the transcontinental lines now as compared with then, because I am not in the railroad service; but I can answer the question broadly as to railway traffic as a whole, that there is not as active solicitation of the business now as there was in 1901 or prior to 1906.

Q. Is that due to the more close observance of the tariff rates and regulations?

A. In large part it is due to that and in large part it is due to service, which an irregular route can not compete with.

Q. An irregular route?

A. I am speaking of the general question. I feel that it is also in large part due to the community of interest between railroads. They are allowing business to take its natural routes more than they did in the past. There has been an evolution in railroading since 1910—quite an evolution.

Q. The change in respect to giving up the rebates has a tendency to make traffic seek the best routes—the direct route?

A. It has.

Q. And eliminates the competition by indirect, roundabout routes; is that it?

103 A. It certainly does.

Mr. BLAIR. That is all.

By Mr. ORR:

Q. I believe you stated, did you not, Mr. Lincoln, that the Central Pacific and the Union Pacific was the most direct route?

A. To San Francisco and upper California from seaboard territory and C. F. A. territory.

Q. Do you wish to be understood as saying that if, in the days prior to 1901, the Southern Pacific Company practically controlled the traffic between the territories you have described, it was done by indirect methods?

Mr. BLAIR. Counsel objects to the form of the question as attributing to the witness a statement which I do not think he has made. The witness has never said the Southern Pacific practically controlled the traffic in question.

Mr. ORR. I am afraid you are mistaken about that.

Mr. BLAIR. You do not have to be afraid about it.

Mr. ORR. He did say that, I think. He said that the South-  
104 ern Pacific dominated and practically controlled certain territory.

Mr. BLAIR. Will you find that in his testimony? You put that in your question and we objected to it.

Mr. ORR. I know you did, and he answered it. (Reading from page 62 of the stenographic transcript:)

“Q. To your knowledge and from your experience, what transportation company dominates and controls the traffic originating in the territory you have described for transcontinental shipment?”

That was objected to, and there is a good deal of objection in the record at this point.

Then I read from page 63 of the record, near the bottom:

“The WITNESS. If you are speaking of the present time, I would not say that any particular company could dominate the situation as to rates to the Pacific coast. Of course, the Southern Pacific Company, by reason of its extensive lines in California, would and should receive consideration at the other hands in the adjustment of rates. A very different situation exists to-day from what existed prior even to 1910.

“Q. Take the condition as it was. Are you acquainted with the conditions as they existed prior to 1901?

105 A. Yes, I am—

“Q. I mean on this rate situation—this traffic situation—in the territory you have described, on transcontinental traffic?

"A. It is my recollection that it was about 1901 or possibly 1902 that the Union Pacific influence over the Southern Pacific came into existence. As to the time prior to 1901, that, by reason of my official connection with the Missouri Pacific, I was quite familiar with at that time.

"Q. What was the situation at that time, if you know, as to what influence or what companies dominated—controlled—the traffic in territory you have described?

"Mr. BLAIR. Counsel objects, etc.

"Q. Go ahead.

"A. Prior to 1901 the Southern Pacific Company was the dominating factor in adjusting rates to the Pacific coast. That is very logical and very probable by reason of the territory covered by their rails."

Mr. BLAIR. Now read the next question and you will get to the point.

"Q. I will ask you to state whether you have knowledge of the conditions prevailing prior to 1901 as to what particular company or transportation company practically controlled the rate?" And then more objections.

I continue to read, at the top of page 67.

"Q. The question is, Have you a knowledge as to what company controlled it? That could be answered yes or no.

"A. I have knowledge; yes, sir.

"Q. You may state what company it was, or what companies if more than one, that controlled that rate?

"A. At that time the rates to California were controlled by the Southern Pacific and the Santa Fe Companies."

(By request the stenographer read the pending question, as follows:)

"Q. Do you wish to be understood as saying that if, in the days prior to 1901, the Southern Pacific Company practically controlled the traffic between the territories you have described it was done by direct methods?"

Mr. ORR. Now, what is the objection, Mr. Blair?

Mr. BLAIR. That the witness has never testified that the Southern Pacific controlled the traffic passing between, say northern and central California points and the Atlantic seaboard.

By Mr. ORR:

Q. You may answer, if you understand the question.

A. I understood, and believed, that the Southern Pacific was the dominating line in the matter of rates to and from California, for the reason that it occupied that territory with its rails; it was the distributing line for a large part of the business from San Fran-

cisco, Sacramento, and Los Angeles. Its occupation of the territory naturally made it the dominating line in the question of rates to and from California.

Q. Now, the question; If it did so dominate and control that traffic, do you mean to be understood as saying that it did so through the means you have described as being indirect?

A. No; I do not mean that.

Q. If there is any change in this control of that traffic, you do not mean to say that it is because of the change in conditions you have described?

A. There is a change in conditions not only as to rebates—

Q. I mean, rebating—

108 A. I say there is a change in conditions not only as to rebating but also a change in conditions as to the control of the local territory in California.

Mr. ORR. I believe that is all.

Mr. BLAIR. That is all.

FRANK H. DAVIS was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your name?

A. Frank H. Davis.

Q. And your residence?

A. Elizabeth, New Jersey.

Q. And your address?

A. 25 Broad Street, New York.

Q. Were you ever connected in any way with Mr. Collis P. Huntington?

A. Yes, sir.

Q. When did that begin?

109 A. I entered his service February 1, 1881.

Q. And it continued up to what time?

A. Until July 1, 1901.

Q. When you first entered his service in what capacity was it?

A. As clerk.

Q. Through what different capacities did the service extend?

A. I remained a clerk for several years and was then appointed an officer of the different companies. When I left the Southern Pacific I was assistant treasurer in New York.

Q. During all that twenty years were you in the New York office?

A. Yes, sir.

Q. Was the Southern Pacific office and Mr. Huntington's own office at the same place?

A. Yes, sir.

Q. In your position as clerk were you brought into acquaintance with the properties which he held, his investments?

A. To some extent.

Q. Was there a time when you received definite information as to what his investments were?

A. I had a record of his investments on the books which I kept for some years.

Q. That you kept for him?

A. Yes, sir.

Q. When did that bookkeeping begin?

A. It was very imperfect at the start. I cannot tell you just when a definite set of books was opened for Mr. Huntington.

Q. Can you fix it within certain years?

A. I should say it was before 1885.

Q. When those books were opened up did you enter up on them different investments that he then had?

A. Yes, sir.

Q. At that time did he have any stock in the Central Pacific Railroad Company?

A. My recollection does not go back as far as that. I could not tell you.

Q. Do you remember whether he had any considerable amount of stock, if he had any?

A. I can not recall. That is thirty-odd years ago. I can not recall detail from the books.

Q. Do you know what has become of those books?

A. I do not.

Q. At this period was there any stock of the Central Pacific Railroad Company standing in your name?

A. I can only tell that by reference to the stock transfer books. I do not recall it.

Q. You mean you do not recall-----

A. (Interposing.) Whether any stock was in my name or not, the stock transfer books would show that if there was.

Q. Do you remember whether at any time, during the period of your being a clerk, stock stood in your name?

A. Yes; there was such a time.

Q. Was that stock your own property?

A. It was not.

Q. Do you know who the owners of it were?

A. I could not say that. The stock was the property of different parties who were interested in the Central Pacific; it might have been one or it might have been another whose stock was in my name.

Q. Did you have any general knowledge of how many stockholders there were in the Central Pacific in, say, 1885?

A. I could not tell you.

Q. Did you know whether the number was small or large?

A. I could not tell you that.

Q. Did you know at that time whether there were any stockholders in Europe?

A. From general information. I was not the transfer clerk.

Q. Were the transfer books of the Central Pacific Railroad Company kept in that same office?

A. They were kept on the same floor, in a different office.

Q. You remember the fact of there being a lease made by the Central Pacific Railroad Company to the Southern Pacific Company?

A. From general information. I do not remember seeing the lease.

Q. You knew at the time that it was reported that a lease had been made, as current information?

113 A. Yes.

Q. At that time do you know whether there were European stockholders in the Central Pacific?

A. I am not able to tell that definitely. I assume there were. There had been before that time.

Q. There had been before that time?

A. Yes.

Q. Do you know about when the sales to the European stockholders began and ended?

A. I could not tell you when they began or when they ended. When I went there, in the company's employ, stock was being sold.

Q. That is, in 1881?

A. Yes; but when it began and when it ceased I am not able to tell you, because I could not remember.

Q. Through what house were those sales made?

A. Speyer & Company.

Q. Do you know for what account the sales were made—whether it was for Mr. Huntington's personal account or for any joint account?

A. It was for the account of the various individuals who owned the stock.

Q. What individuals?

114 A. Mr. Stanford, Mr. Huntington, Mr. Hopkins, and Mr. Crocker.

Q. Were the sales made on joint account of the four?

A. I could not say. The stocks were sold, and they were credited with the proportion that they had contributed to the number of shares.

Q. Do you know, in 1881, when you went there, how long the sales had been going on?

A. I do not.

Q. Do you recall, then, whether Mr. Huntington had left any considerable amount of the Central Pacific stock?

A. I am unable to state.

Q. We had a conversation about this matter a few days ago, did we?

A. Yes.

Q. Do you remember the subject matter of the opening up of the books being discussed by us at that time?

A. Yes.

Q. Do you now recall whether or not, when you opened up a definite set of books, there was any considerable number of shares of Central Pacific stock among the shares that Mr. Huntington then had?

A. I do not remember.

Q. You had a belief on that subject when we talked the other day?

A. That he had not very many, as I recall; but as to how many, it is impossible for me to remember.

Q. You have the recollection that there were not very many when these books were opened up?

A. Yes.

Q. But how many, of course, you can not recall?

A. No.

Q. And you do not know where those books are now, at this time?

A. No, sir.

Q. And that opening up you place somewhere between 1881 and 1885?

A. I should say before 1885.

Q. You have spoken of stock standing in your own name not belonging to you; can you tell me whether such was the case with any of the other employees?

A. That did not belong to them?

Q. Yes.

A. I should say so. There might have been some instances where man might have had a hundred or two hundred shares belonging to him, but the greater part did not.

Q. Did that stock remain in the name of those employees after the stock itself had been sold abroad?

A. It was delivered in those names. Parties, of course, having the right to send it back for transfer at any time.

Q. Did a considerable part of that stock continue in those names without being sent back for transfer for some length of time?

A. A considerable part.

Q. Do you remember a visit to this country of Sir Rivers Wilson?  
A. I do.

Q. Do you remember whether that was in the early nineties?  
A. I can not tell you the date, sir.

Q. Do you remember whether any of the English shareholders had transferred their stock prior to the arrival of Sir Rivers?

A. I could not tell you.

Mr. McCLENNEN. That is all.

Mr. BLAIR. We have no questions.

117 THOMAS H. ROSSBOTTOM was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Thomas H. Rossbottom.

Q. And your residence?

A. Sound Beach, Conn.

Q. And your address?

A. My business address is 24 State Street, New York.

Q. What is your occupation?

A. I am secretary of the Panama Railroad Company.

Q. How long have you occupied that position?

A. I can not say exactly how long I have been secretary. I should think it is about seven or eight years.

Q. Have you with you certain contracts made with that railroad company?

A. I have here some contracts between the Panama Railroad Company and the Pacific Mail Steamship Company.

Q. Have you an agreement with you dated October 1, 1872?

A. No, I have not.

118 (At this point counsel placed a book before the witness.)

A. (Continuing.) That was not between the Panama Railroad Company and the Pacific Mail Steamship Company. That was a copy of an agreement between the Pacific Mail Steamship Company and a number of transcontinental railroads, that we had in our files. It was not the original agreement.

Q. You had a copy?

A. We only had a copy of that.

Q. And you testified in the case of the United States against the Union Pacific Railroad Company, did you?

A. I just offered that in evidence.

Q. Was that copy which you there offered a correct copy of the original?

A. I do not know. I explained at that time that I did not know  
anything about it; that I had just found it in our files.

Q. You do not know where the original is?

A. No, I do not.

Mr. DUNNE. He does not know that there is an original.

The WITNESS. I know nothing about it except that I found what  
purports to be a copy in our files.

By Mr. McCLENNEN:

Q. Was the copy in your files of this agreement of October  
1872, a printed copy?

A. No; a typewritten copy.

Q. Was it in the files of your company where contracts pertaining  
to the affairs of the company were kept?

A. No; it was not.

Q. Where was it?

A. It was in our file called "Transcontinental matters."

Q. Where did you keep other contracts relating to transconti-  
nental matters?

A. We kept those in the safe.

Q. In the safe?

A. Yes.

Q. Those were originals that were kept in the safe?

A. Originals were kept in the safe.

Q. Did you have in this same file with this copy of October 1,  
copies of others, the originals of which were in the safe?

A. No.

Q. You have no copies of those?

A. No.

Q. Did the copy which you found there bear date October  
1, 1872?

A. Well, I can not recollect that it did, but from the fact that it  
was offered as a copy of a supposed agreement of October 1, 1872,  
must have borne that date at that time.

Q. And was this copy that was introduced in the merger record  
copy of the one that you then furnished?

A. No; I offered at that time the only copy we had.

Q. You left that with them?

A. I left that with Mr. Severance.

Q. And Mr. Severance was one of the counsel for the Govern-  
ment in that case?

A. I think he was.

Q. You haven't seen that copy since?

A. Well, I would not like to state that, because that would indicate that Mr. Severance had not returned it, but I could not find it.

Q. You have looked?

A. I have looked for it.

Q. In an effort to get it?

121 A. I only heard of this hearing a half an hour ago, and I looked through my papers in that short interval trying to find it, but I have not been able to find it.

By Mr. GANN:

Q. That was due to the fact that you were away from the office, was it not, Mr. Rossbottom?

A. Yes.

Mr. McCLENNEN. Petitioner offers as Exhibit 24 the copy from the record in the case of the United States against the Union Pacific Railroad Company just referred to in the cross-examination of the witness.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 24, September 22, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. BLAIR. Counsel object to the offer on the ground that the exhibit offered does not prove itself, and there is no proof whatever that there ever was any such contract. There is no proof that the exhibit is a true copy of that contract, and, in the alternative, the copy, if it existed and if the exhibit is a true copy thereof, is irrelevant, incompetent, and immaterial evidence.

Mr. DUNNE. And we have not even evidence that the printed copy shown the witness is a copy of the alleged contract to which the question referred.

Mr. McCLENNEN. I wish you would waive that particular 122 objection, so as to relieve us of the necessity of proving that it is really a correct copy, as it is very evident that it is.

Mr. BLAIR. We have no objection to saying, subject to correction, that we shall not dispute that the printed transcript of the Union Pacific merger case is a correct transcript of the evidence adduced in that case, this statement being made to apply to this particular matter.

By Mr. McCLENNEN:

Q. Have you with you the original contract between the Panama Railroad Company and the Pacific Mail Steamship Company, dated December 16, 1895?

A. I have.

Mr. McCLENNEN. This contract the petitioner offers as Exhibit 25. Will you inspect it and then permit us to return it without keeping it as part of the records?

Mr. BLAIR. Have you a copy of this?

Mr. McCLENNEN. That is in the merger record at page 3293.

Mr. BLAIR. Objected to as irrelevant, incompetent, and immaterial  
simony.

Mr. McCLENNEN. Saving your objection, may I substitute  
for the original the copy that is in the merger record at page  
3293?

Mr. BLAIR. As you have the original there, he is going to copy it  
way, is he?

Mr. McCLENNEN. Yes.

Mr. BLAIR. Just let him copy the original.

Mr. McCLENNEN. The original, then, may be returned to the  
ness!

Mr. BLAIR. Yes.

(The contract referred to was thereupon marked "Petitioner's Exhibit No. 25, September 22, 1914", and will be found in the volume petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Have you also the contract between the Panama Railroad  
company and the Pacific Mail Steamship Company, dated June 11,  
and a supplemental contract between the same parties bearing  
same date?

A. I have.

Mr. McCLENNEN. The petitioner offers in evidence as Exhibit 26  
original contract just referred to, and as Exhibit 27 the supplemental  
contract just referred to.

Mr. BLAIR. We make the same objection as to those.

Mr. McCLENNEN. And with the same agreement as to the  
use of the copies?

Mr. BLAIR. Yes.

The original contract referred to was thereupon marked "Petitioner's Exhibit No. 26, September 22, 1914", and the supplemental  
contract "Petitioner's Exhibit No. 27, September 22, 1914", and will  
be found in the volume of petitioner's exhibits.)

By Mr. ORR:

Q. When did this agreement of December 16, 1895, go out of  
existence?

A. I will have to look at the contract itself. I think in 1902. The  
contract states when it terminated.

Q. Are you certain it continued until 1902?

A. Well, I can tell you exactly. In 1900 it terminated.

Q. It terminated in 1900?

A. December, 1900.

Q. When did the 1902 agreement terminate?

A. That terminated on July 12, 1905. This agreement of 1902 provided that when the United States Government secured control of the Panama Railroad then we had the right to terminate the 125 agreement upon giving six months' notice, and we gave the steamship company six months' notice on January 12, 1905, so that it terminated six months after that.

Cross-examination by Mr. DUNNE:

Q. Was there any intermediate contract between the expiration in 1900 and the resumption of contractual relations in 1902?

A. Yes; there was a charter agreement between the steamship company and the Panama Railroad by which we chartered their steamers on the Atlantic side.

Q. On the Atlantic side?

A. Yes; at a rate per month.

Q. And that was the only agreement?

A. That was the only agreement.

(Whereupon a recess was taken until two o'clock p. m.)

EDWIN S. ALLEN was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. GANN:

Q. What is your occupation?

A. I am vice president of the National Railway Publication Company.

Q. And how long have you been vice president of that company?

A. Six months.

Q. How long have you been connected with the company in other capacities?

A. Since 1881.

Q. Does the National Railway Publication Company publish a book known as the "Official Guide"?

A. It does.

Q. How long has that company published such a book?

A. I think it was 1868 it was started.

Q. It has been published for a great many years?

A. Yes.

127 Q. What, generally speaking, is the matter that is published in the Official Guide?

A. It publishes time tables and maps, lists of through sleeping cars, the officers of railroads and connections, index of stations, so on.

Q. Has it a wide circulation?

A. Yes, it has a wide circulation.

Q. Is it distributed generally among railroad men?

A. Yes.

Q. Have you from your files brought a copy of the Official Guide?

A. I have.

Q. What is the date of the volume which you have produced?

A. June, 1885.

Q. What are the sources from which the information published in that guide is secured?

A. It comes from the officers of the railway companies.

Q. And is it paid for in the same manner as advertising matter?

A. Well, some of it is; some of it is published gratuitously and some of it is paid for.

Q. You carry in that magazine, or publication, editorial matter, do you not?

A. Yes.

Q. That is not paid for, is it?

A. No.

Q. Will you turn to page 223 of the Guide and state what that page covers, generally speaking?

A. It covers a list of the officers of the Southern Pacific Company.

Q. Who held office in June, 1885, or about that date?

A. Yes.

Q. And give the names of the officers?

A. Yes.

Q. Does it also show the division of the Southern Pacific Company's lines as to operating divisions?

A. I can not say as to operating. It says, "Atlantic system, east of El Paso" and "Pacific system, west of Ogden and El Paso." I do not know whether that represents the operating or traffic.

Q. Who furnished you the information upon which that was published?

Mr. BLAIR. Were you in charge in 1885?

The WITNESS. I was not in charge; no sir. I was working on the editorial force.

Mr. GANN. He says since 1881.

Mr. BLAIR. He may have been connected with it without having any knowledge of the sources from which that information is derived. I object to the question until the witness is shown to have personal knowledge of the matter about which he is interrogated.

By Mr. GANN:

Q. You stated that you were an officer and vice president of the company?

A. Yes.

Q. At the present time?

A. Yes.

Mr. BLAIR. Six months.

The WITNESS. Yes.

By Mr. GANN:

Q. And since that time you have been in service—since 1881?

A. Yes.

Q. And, owing to the multiplicity of things that are sent to the office by railroad companies, could you have personal knowledge of each and every order that was sent to the office of the National Railway Publication Company?

130 A. No, sir; I could not.

Q. Have you in your possession, or the possession of the National Railway Publication Company, at this time, the original order or orders upon which the information published on page 223 was published?

A. I have not.

Q. Have they been destroyed?

A. They have been destroyed.

131 Q. I will read from the deposition that was given by Mr.

R. H. Pratt in San Francisco on Tuesday, July 14, 1914, at the instance of the defendants in this case. On page 22 there is this language, and I will ask you to compare the language shown on page 223 of the Official Guide for June, 1885, with it, and say if it agrees with the words shown in this deposition:

“The general traffic manager, under the direction of the general manager of the Pacific system, will be charged with the handling of all through business of the company and that interchanged by or which may be competitive as between the Pacific and the Atlantic systems.”

The WITNESS. “And the Atlantic system.”

Q. Does that language coincide?

A. It coincides with the notice appearing about the middle of the page.

Q. Does the page also show that Mr. John C. Stubbs was at the time general traffic manager of the Southern Pacific Company?

A. J. C. Stubbs.

Q. Does that page show that the line from El Paso to New Orleans, designated a part of the Atlantic system, appears anywhere as a part of the Pacific system?

132 A. I can not say as to that.

Q. The constituent lines making up the Atlantic system and the Pacific system are shown, are they not?

A. I do not understand that they are divided here.

(Counsel indicates on page 223.)

A. (Continuing.) That does not apply; it does not show that those are the eastern Atlantic system.

Q. Is there a description on page 223 of the Atlantic system which says "east of El Paso"?

A. Those words are used.

Q. Are the words "west of Ogden and El Paso" attributed to the Pacific system?

A. Yes.

Mr. GANN. The petitioner offers in evidence as Exhibit 28, page 223, of the Official Guide, dated June, 1885.

Mr. BLAIR. Before making objection, I desire to ask the witness a question which is the basis of the objection.

By Mr. BLAIR:

Q. Do you of your own personal knowledge know that that information was obtained from any report made by the Southern Pacific Company?

A. I do not.

Mr. BLAIR. Counsel objects to the evidence offered on the ground that it is not the best evidence, that no foundation has been laid for introducing secondary evidence, and the matter appearing on the page offered has not been traced to any of the defendants in this case, and, furthermore, generally on the ground that the evidence is immaterial, incompetent, and irrelevant.

(Page 223 of the Official Guide, June, 1885, was thereupon marked "Petitioner's Exhibit No. 28, September 22, 1914", and will be found in the volume of petitioner's exhibits.)

(No cross-examination.)

THOMAS M. SCHUMACHER was called as a witness on behalf of the petitioner and, being first duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. Your residence?

A. New York.

Q. And your address?

A. 21 East 82nd Street.

Q. Will you please state your connection with the railroad business, giving the different capacities in which you have acted, the roads for which, and the times in which, chronologically, as nearly as you can?

A. That is quite a long story. I can give you the detail of it; I will file it with you; I have a copy of it in my office, but it is a very

long story. I have made a good many changes. However, I will go through with it, if you desire.

Q. If you will, I think it will be very convenient to have it.

A. Shall I go back to the time I started in the railroad business?

Q. I think so; yes. We want indirectly to find out how old you are in that way, without asking the question.

A. I started in at 16 as a telegraph operator on the Erie Railroad; from there to the old Bee Line, which is now part of the Big Four, as freight clerk.

Q. You started when?

A. When I was sixteen.

By Mr. ORR:

Q. What year?

135 A. I was born in 1862. I can not make all these figures for you here. From the old Bee line, I railroaded there for two or three years, as a clerk and trainman, brakeman and fireman, and yard conductor. From there to St. Louis, I went with the Burlington, I think it was, as clerk; from there to the Missouri Pacific. I am going over this hurriedly and not giving you all the details, but I will later—that is, after I get a little further along I will give you a little more detail. I was with the Missouri Pacific, I think, four or five years, and from there to the Big Four again as cashier at East St. Louis. Then with the Union Pacific in 1887 as chief clerk in the general agent's office at St. Louis, October 1st, 1887. I was in that position until April 1st, 1891, when I went to Omaha as chief clerk in the general freight office of the Union Pacific. I was in that position until November 1st, 1894, and then I went to San Francisco as general agent in charge of the freight business of the Union Pacific in California. I was in that position four years. I left and was made to go with the Continental Freight Express as general manager and vice president, with headquarters in San Francisco. I was there two

years and returned to the Union Pacific as general agent in

136 San Francisco, and was there about a year, and was sent from there to Salt Lake City in charge of the traffic of the Oregon Short Line, a part of the Union Pacific system. I was in that position four years. From there I came to New York as general manager of the United Fruit Company's Steamship Line. I was in that position for one year. From there I went with the El Paso & Southwestern as general traffic manager, with headquarters at Chicago, four years. From there as vice president in charge of traffic of the Denver & Rio Grande and Western Pacific, six months. From there I returned to the Union Pacific and was assistant director of traffic of the Union and Southern Pacific systems for six months; then to the American Smelting and Refining Company, in charge of their

traffic, for two years. From there I returned to the El Paso & Southwestern as vice president, and there I have been since, and last November I was made chairman of the Chicago, Rock Island and Pacific Railway board. I think that is pretty close to correct.

117 By Mr. McCLENNEN:

Q. In those positions have you had a general knowledge of transcontinental freight matters for a number of years?

A. Since 1887.

Q. What, in railroading, is described as transcontinental freight?

A. Freight that has its origin or destination east of the 97th meridian, I believe, which passes through Freemont, Nebraska. I may not be correct as to the number of the meridian, but that is the line—freight having its origin or destination east of that meridian, and picked up or laid down on the Pacific coast, west of the Sierra Nevadas.

Q. That definition has been true for many years past?

A. I do not know of any other definition.

Q. There is a territory, is there not, known as the "Seaboard freight territory" or "Atlantic seaboard territory"?

A. Yes.

Q. What is that territory?

A. I do not believe I could answer that question accurately as to how far from the seaboard west is considered seaboard territory.

I do not believe I can answer that question.

118 Q. Can you state how far south it extends?

A. My understanding is that seaboard means "seaboard"—on the seaboard. When you go west of the seaboard you get in so-called trunk-line territory.

Q. In the movement of freight from the Atlantic to the Pacific, and the reverse, is there a certain territory, not immediately on the water line on the Atlantic, which is, nevertheless, rated as seaboard territory?

A. Yes.

Q. And is there any exactly defined western boundary line to that territory?

A. I do not know of any.

Q. Is there a territory on the Atlantic seaboard from which freight is drawn to the seaboard for shipment around to the Pacific?

A. Yes, sir.

Q. And in the ordinary operations, about how far west does that territory run?

A. Well, I think that varies largely with the rates and the commodities involved. On some commodities the rates are low and the seaboard lines can go farther west than they can on some other

139 commodities. I do not believe there is any definite line—I never understood that there was any definite line. They go as far as they feel they can, and take care of the locals. That is my understanding.

Q. When you say "take care of the locals", am I right in understanding you to mean that the lines running by water from New York will carry to California at the New York rate, bearing themselves the charge from the interior to New York?

A. I believe they still do that. I know they did years ago; when I was in the transcontinental business they did that, and I suppose they do yet.

Q. Is that what is called "absorbing the rate"?

A. Absorbing the locals to the seaboard.

Q. Is there a territory known as Central Freight Association territory?

A. Yes, sir.

Q. And, roughly, what are the boundaries of that?

A. The eastern boundary is an imaginary line from Buffalo to Pittsburgh, thence following the Ohio River, I think, north of the Ohio River and as far west as the Mississippi River. The Mississippi River is the western boundary line, and the imaginary line through Buffalo and Pittsburgh is the eastern boundary line and the Great Lakes the northern boundary and the Ohio River the southern boundary.

140 Q. Is there any hiatus between the eastern boundary line of the Central Freight Association territory and the Atlantic seaboard territory?

A. I do not know of any.

Q. Is there a territory known among railroad men as the "Western trunk line territory"?

A. Yes, sir.

Q. And about what territory is that?

A. The Western trunk line has its eastern boundary at Chicago and Chicago junction points and the western boundary line is the Missouri River.

Q. Is there a territory known among railroad men as the Trans-Missouri territory?

A. Yes, sir.

Q. What, roughly, are the boundaries of that?

A. I am not as positive of that. I believe the eastern boundary is the Mississippi River and the western boundary is—well, it runs up to the Colorado junctions; in fact, it takes in the intermountain country; the trans-Missouri freight bureau publishes or promulgates all tariffs, naming rates between the Mississippi River on the East, Kansas, Nebraska, Colorado and Utah on the west.

Q. And that includes as well the Inter-Mountain—

A. Yes; not beyond Ogden.

Q. Then is there a rough general description for the rest of the territory west?

A. Yes.

Q. What do you call that?

A. The territory comprising Arizona, Nevada, eastern Oregon, and western Idaho. I do not know of any specific name for that territory. The rates are published both by the Trans-Missouri bureau and by the Transcontinental bureau. I think both bureaus handle those tariffs. The dividing line on the Oregon Short Line between Trans-Missouri and Transcontinental is Kuna, Idaho; Ogden on the Central and Union; and Albuquerque on the Santa Fe.

Q. Going back, now, to your railroading at the time of 1881, was there any means of getting into California and Nevada and the western slope generally by rail other than through the Ogden gateway and the Central Pacific Railroad?

A. No; not all-rail.

Q. What was the next gateway that was made into California?

A. I do not believe I can answer that question from memory.

Q. It appears that in 1883, in February, the Sunset Route was in operation through El Paso. Up to that time was there any other gateway than Ogden and El Paso into that Pacific slope territory?

A. I do not know. The Santa Fe and—the Atlantic & Pacific was built before that, I know—I am not prepared to answer that question.

Q. At the present time are there any means of getting into California with any reasonable directness by rail other than through the Ogden gateway, through El Paso, and, third, over the Santa Fe?

A. Yes.

Q. What other means?

A. There is the San Pedro Line, Salt Lake & San Pedro, from Salt Lake to Los Angeles—a very direct line.

Q. That connects with the Union Pacific at Salt Lake?

A. And the Denver & Rio Grande also.

Q. And that connection was made about when?

A. 1905; July 7th it was opened for business.

Q. Is there any other?

A. Of course, the northern lines all take business for California.

Q. And by the "northern lines" you mean what?

A. The Northern Pacific and the Great Northern. They handle California business by the way of Portland.

Q. Does the Canadian Pacific—

A. I do not believe they are in the business now. They went out of the business some time ago.

Q. Is the business for California which goes over the Northern Pacific or the Great Northern of a substantial amount, comparatively?

A. No; I should not say so.

Q. What means of access did the Missouri Pacific have to California during the periods when you were connected with that road?

A. With the Western Pacific! You say "that road."

Q. Were you not connected with the Missouri Pacific?

A. No; I was with the Western Pacific.

Q. I beg your pardon.

A. Oh, when I was a clerk for the Missouri Pacific, you mean?

Q. Yes; away back.

A. I think we had a line in connection with the M., K. & T. through El Paso.

Q. And the M., K. & T. is what?

144 A. The M., K. & T. at that time was a part of the Missouri Pacific system.

Q. But I mean, for the court's purposes, will you not give the full name?

A. The Missouri, Kansas & Texas was a part of the Missouri Pacific as well as the Iron Mountain; and some other freight went via the Iron Mountain and the Missouri, Kansas & Texas to Texarkana or Dennison, and thence by the Texas & Pacific to El Paso.

Q. And from El Paso over what?

A. Over the Southern Pacific; and also through the Missouri Pacific to Kansas City, and thence over the Union Pacific to Ogden or the Santa Fe direct. The Union Pacific traffic, of course, went over the Central Pacific.

Q. The Western Pacific that you have mentioned runs from where to where?

A. Salt Lake to San Francisco—to Oakland.

Q. Does it pass through Ogden?

A. No, sir.

Q. That was opened about June, 1910, was it?

A. In 1910, I think.

145 Q. At the present time are there any other ways than those that you have just described of reaching California from the eastern half of the country by rail?

A. I think we have mentioned them all.

Q. What is the method by which the Chicago, Milwaukee & St Paul reaches California?

A. Yes; we omitted that one. They have their own rails, of course, to the Pacific coast—Seattle. I believe they have a traffic arrange-

with some of the lines, the O.-W. R. & N., that lets them down Oregon, and with the Southern Pacific into California. I am certain of that, however. Of course, they take business to Council Bluffs and there turn it over to the Union Pacific. That is their California line.

Q. What is the course of the Burlington with freight for the ~~city~~?

A. Their longest haul is to Billings, Montana. They also have a line to Denver, where they connect with the Denver and Rio Grande, another line to Cheyenne, where they connect with the Union Pacific. I think the Cheyenne line has been closed recently, so that routes to California would be, first, through Billings, and, second, through Denver—earnings considered.

Q. Disregarding questions of intercorporate relations, what would be the ordinary course which freight would take, if not otherwise, from and to northern and central California, say through Fresno, and from Nevada to and from the Central Freight Association territory and territory east of that and north, say, of the line of the Norfolk & Western near the southern boundary of California?

A. It would move through Ogden.

Q. And, moving through Ogden, would take it over what line to Ogden?

A. From California?

Q. From California.

A. Either the Central Pacific or the Western Pacific. They are parallel lines.

Q. And before 1910?

A. The Central Pacific only.

Q. When you were connected with the Union Pacific, in charge at San Francisco, from November, 1894, for the ensuing four years, was the Southern Pacific engaged in seeking traffic from northern and central California to the east and the reverse?

A. Yes, sir.

Q. In what way was that traffic sought?

A. Well, it depended on how far east the destination or point of origin might be. If it was east of Toledo, Detroit, Indianapolis, Cincinnati—take that line, say; on and east of that line; influence was directed to the Sunset line, their long haul, and of that line through Ogden.

Q. By the Sunset line you are describing the lines through El Paso to Galveston or New Orleans and thence by water to New York;

Q. No.

Q. What?

A. I mean by their Sunset line to the territory mentioned—that is, the middle west territory that would move all rail via New Orleans in connection with the Illinois Central, the L. & N., the Southern Railway, the Queen & Crescent. If destined to Atlantic seaboard points then they would work it by water from Galveston or New Orleans in connection with the Morgan Steamship Line.

Q. During that period was the Sunset line competitive with the lines composed physically of the Central Pacific and the Union Pacific, using "competitive" in the sense of both lines having 148 the facilities to take the business and the Sunset line seeking to get it by the Sunset line?

A. Were they competitors?

Q. Yes.

A. Very much so.

Q. What was your strongest competitor during that period when you were representing the Union Pacific?

A. The Southern Pacific—to that particular territory?

Mr. DUNNE. To which particular territory?

The WITNESS. East of the line that I spoke of.

By Mr. McCLENNEN:

Q. At that period did the Union-Central line have any other important competitor?

A. They had the Atchison.

Q. Do you remember about when the Atchison got into California?

A. Well, they were into Mojave—I do not know the date; I could not give you the date.

Q. But it was considerably before that, was it not?

A. Oh, yes; but into San Francisco, I should say, along in 1896 or 1897.

148a Q. That was over the tracks of the Southern Pacific, under some trackage arrangement, was it?

A. Yes; by using the Southern Pacific tracks from Mojave to Bakersfield, 65 miles, and buying the San Joaquin Valley Railroad I believe.

Q. Do you remember whether or not possibly the actual getting into San Francisco by the Atchison over its own line was in May 1899?

A. Possibly as late as that; I thought a little earlier than that. That may be correct.

Q. And do you remember about when the Atchison got to Chicago, at the other end?

A. They built into Chicago, I should say, in 1899 or 1900, or about there. That is a guess, however, I am not positive of that.

Q. Do you know to what extent—of course not stating it in tons or in dollars, but in general—the Sunset Line was taking freight of central and northern California to the Atlantic seaboard, as compared with that moved over the Central through Ogden?

A. Well, for any particular time?

Q. Take it during the time you were in San Francisco, from 1894 to 1898.

A. I do not believe I could give any figures; I can not give any figures as to that; but the Ogden lines got very little of that business. The strong line was the Sunset line, through the Gulf ports.

Q. What were the circumstances that led to the success of the Sunset line in that competition? That is, what did that line have to offer that succeeded in controlling such traffic as it did control?

A. Well, they had their local organization in San Francisco, which has always been very strong. They could do a great many things locally for shippers that a foreign line could not do; I mean legitimate things. Their service was better.

Mr. BLAIR. You are speaking of what time?

The WITNESS. From 1894 to 1898.

Q. By Mr. McCLENNEN:

Q. In general were the rates the same of both lines?

A. Yes.

Q. Where rates are the same, what are the elements of competition? What can railroads offer to induce traffic one way or the other—legitimately?

A. Principally service.

Q. And by "service" you cover how much?

A. I do not quite understand your question.

Q. Do you mean time in transportation?

A. Transportation schedules; yes.

Q. Ability to keep to schedules?

A. Yes.

Q. Settling claims promptly also, I suppose?

A. Yes; the manner in which they take care of the business, in every way.

Q. Do you remember the occurrence, which was, in fact, in 1901, when the Union Pacific and the Southern Pacific came under a common organization to some extent?

A. Yes.

Q. Commonly called "the merger"?

A. Yes.

Q. Did you notice the effect which that had upon the attempts to influence business by the Sunset line in preference to the Central Pacific, as compared to what it had been before?

A. I will answer that in this way: That merger had the effect of moving the eastern terminus of the Central Pacific, you might say to Omaha, stretching their haul a thousand miles and increasing their earnings proportionately. The line over which they solicited freight was moved east accordingly; instead of passing through Detroit, Toledo, Indianapolis, and those cities, they moved into Pittsburgh, we will say. That business moved through Omaha; not entirely so, however, but the earnings being much more favorable through Omaha than they had been before, that line was favored.

Q. The reason for favoring the Sunset Line was what? That is the reason for the Southern Pacific's favoring the Sunset Line was what?

A. Because their haul was longer and their earnings were greater.

Q. And even after this so-called junction, we will say, between the Central and the Union, as I understand you, they still sought the seaboard business by the Sunset Route?

A. Yes.

152 Q. Including in that business that which was east, say, to Pittsburgh and Buffalo?

A. Not so accurately, I do not believe; that is, around Pittsburgh territory. The Atlantic seaboard was solicited by the Sunset Route. I think, we will say, as to Pittsburgh territory they were rather neutral as between Omaha and Sunset. It depended somewhat on the commodity.

Q. After that 1901 merger what was the condition in the Central Freight Association Territory? Did they reverse things and seek by the Union-Central, or did they let it take its own course as between that way and New Orleans?

A. I do not believe I could answer that question; I did not come in contact with that particular traffic at that time.

Q. Take Chicago business before 1901. Was the Southern Pacific making an effort to get it by New Orleans?

A. Well, very little, if any.

Q. How was it after 1901?

A. Exclusively through Omaha.

Q. Take another point: Cincinnati. How was that before and after?

153 A. Before 1901, Sunset. I think after the merger they favored the Ogden route or the Omaha route.

Q. Was there in the growth of the country, or in business conditions, or in any other way any reason for the change in the lines on which the traffic moved other than the change in the manner extent of the solicitation?

A. I do not believe I quite understand your question.

Q. Without putting it down on the record again—you have indicated a change in 1901.

A. Yes.

Q. I am asking you whether there was anything other than the change in the soliciting efforts to account for that change?

A. I may be dense on this, but I don't get that question.

Q. Undoubtedly the denseness is mine. I am perfectly willing to assume it. I am right in understanding you, am I not, that after 1901 the proportion of the traffic moving through Ogden from this central territory was greater than it had been before 1901?

A. Yes.

Q. Now, I asked you whether there was any reason for that change in proportion, other than the change in the effort of the Southern Pacific organization, which before, as you say, had been very vigorously directed towards the Sunset line?

A. Well, the reason for more traffic moving through Omaha is because the Southern Pacific helped to put it that way rather than through New Orleans.

Q. Did you have an opportunity to observe the effect of the merger of 1901 on the traffic over the Central Pacific through Ogden which heretofore had passed over the Denver & Rio Grande and Missouri Pacific?

A. Yes.

Q. What was the effect?

A. Well, after the merger the Denver & Rio Grande takings were materially reduced.

Q. Am I right in saying that it was because it moved over the Union Pacific more exclusively rather than over the two lines?

A. Yes; that is what built the Western Pacific.

Q. The Western Pacific was built as an ally of the Denver & Rio Grande and Missouri Pacific?

A. Can you tell me, of the commodities which moved from this southern California and perhaps Oregon region, and perhaps Nevada, over the Sunset Route which, as a matter of normal traffic, would go over the Central Pacific and Union Pacific and Missouri Pacific if it was not diverted the other way?

A. To what eastern territory?

Q. To the Atlantic seaboard.

A. Of the principal commodities moving through southern Oregon and northern California for the Atlantic seaboard the principal commodity is hops, I believe. They move generally by the Sunset route. They had for many years, and I suppose they do yet. Some named goods move from there; wool from Nevada. I guess those about all.

Q. I call your attention to copper. What knowledge have you about that?

A. There is a large copper smelter in the Shasta Mountains north of Redding. There were two there, but I think one is closed down, the Balacallelo. I do not know just what their output is, but they are quite an important shipper of copper, which all moves to the

Atlantic seaboard by the Sunset.

156 Q. You spoke of wool from Nevada. Do I understand you mean that eastbound wool is carried west over the Central Pacific to the Southern Pacific by the Sunset Route?

A. It is moved that way if it is possible. I could not speak accurately of the last few years.

Q. In large or small quantities?

A. There is quite a considerable quantity of wool produced there, and a great deal of it moves over the Sunset line; not all of it, however; some over the Ogden line.

Q. How far east in Nevada was wool taken around by this long haul going west and then east?

A. I do not know whether the Southern Pacific did come east of Winnemucca or not; I don't think so.

Q. Do you know whether they have taken it that way around from as far east as Corrinne?

A. Yes; shipments have moved that way, but not in considerable quantity. Kelton was quite a shipping point in my days out there; they moved from there, too, but not very much.

Q. In your experience with this general railroad situation prior to 1901, had you ever known of any effort being exerted by the Southern Pacific to get any transcontinental freight over the 157 Central Pacific except that freight which they were unable to control for the Sunset Route?

A. Sunset first, always, to that territory.

MR. BLAIR. To which territory?

The WITNESS. East of what we used to call the "dead line"; don't know just what the description is, but Sunset preferred always.

By Mr. McCLENNEN:

Q. This is the first time you have used that expression "dead line"; what do you mean by the words?

A. I do not believe I can describe that now; I did have it at one time; but approximately Detroit, Toledo, Indianapolis, Cincinnati and east of that line, I should say; that may not be quite correct but approximately so.

Q. After the merger, so called, in 1901 were considerable sums spent in the upkeep and improvement of the Central Pacific Line?

A. Yes.

Q. What was the condition of that line up to 1901?

A. Physical condition?

Q. Physical condition.

158 A. Well, it was a fairly good—what we call a dirt railroad; very little ballast except over the mountains on their heavy grades, laid with 60 and 70 pound rails and kept up just fair.

Q. How would it compare for efficiency and comfort with that road now?

A. About 50 per cent, I should say.

Q. Was any effort made by the Southern Pacific to get trans-continental passenger traffic over the Sunset?

A. Yes.

Q. What was done in that regard?

A. Well, they favored the Sunset Line on passenger business very largely. I believe they were the first to put on a high-class train that stayed on. The Union Pacific put on a so-called limited train, the Golden Gate Limited, I think it was called, or Golden Gate Special—the Golden Gate Limited, I guess, probably in 1889 or 1890. That train was put on and operated for part of one season and discontinued; it was not a popular train. Two or three years later the Southern Pacific put on the Sunset Limited, and I think ran it once a week, and it has been on ever since; in fact, it is a daily train now.

Q. You say that the Union Pacific was not a popular train. What do you mean, with the traveling public?

159 Q. They made a lump charge, which included transportation, sleeping-car accommodations, and meals, and it was not a popular train, I think, on that account very largely. The charge was rather excessive compared with the rates made by other limited trains. Do you know the reason for that high charge?

A. Well, that was by agreement between all the lines interested—the Northwestern and the Union Pacific and the Central Pacific. It was an experiment; it was the first train of the kind to be put on.

Q. What have you observed as to freight schedules over the line of the Central-Union and the line of the Sunset and as to the regularity with which the schedules were kept prior to 1901?

A. I think they were equally good both ways.

Q. About what was the normal length of time of freight hauled from San Francisco to New York over the Central-Union and the eastern connections and over the Sunset Route?

A. That time varied a great deal from year to year and at different times in the year; all the way from ten days to twenty-five or thirty days by rail, all rail, and the Sunset time was probably 17 or 18 days.

160 Q. It was what?

A. Oh, 17 to 20 days.

Q. Prior to the time that the Atchison got into San Francisco what were the possibilities, as a practical matter, of the other railroads making rates to California or establishing any particular through service against the objection of the Southern Pacific?

A. We usually did as they wanted us to do.

Q. And why was that?

A. We could not get in in any other way. Mr. Stubbs was the boss.

Q. That is, Mr. J. C. Stubbs?

A. Yes.

Q. What position did he occupy in the Southern Pacific?

A. He was vice president, in charge of traffic. That meant a great deal more than it does nowadays, though.

Q. What is the comparative effect upon the routing of traffic of the initial carrier and the intermediate carrier or the delivering carrier?

161 A. As to where it is controlled, you mean?

Q. As to how it is routed? I mean if the shipper does not exercise his present rights, what is the comparative opportunity and power of the Southern Pacific and the Union Pacific, and, say, the Northwestern, over traffic originating in Southern Pacific territory?

A. And simply routed Southern Pacific?

Q. No other route specified.

A. No other route specified?

Q. No other route.

A. They would take their long haul; every railroad would do that.

Q. Would it be accurate to say that in the majority of cases of the actual shipment of freight the wishes of the initial carrier determine the route that it will follow?

A. Yes.

Q. About how long has it been that shippers have done much about making their own through routing? I do not refer to the actual time when the law was passed, but how long has it been, as a practical matter, that shippers have done much themselves about insisting upon the through routing since the date named?

A. They have been active in that way ever since I have been in the business.

162 Q. After June, 1910, when the Hepburn Act was passed, have they had much success about it?

A. Yes; I should say so.

Q. Did you know about the orange routing situation in California?

A. Yes.

Q. What was the situation there, say, from 1899 to 1910?

A. Prior to the law being passed?

Q. Yes.

A. The initial lines did most of the routing by reason of the fact that they had arrangements made for icing this freight that had to be iced in transit, and they did not have icing arrangements by all the lines, so that the freight necessarily had to move over the lines with which they had icing arrangements.

Q. Do you know whether they actually reserved the right in their tariff to do their routing?

A. Yes; I think they did.

Q. You have spoken of the influence of the Southern Pacific as the initial carrier in California; what is the influence of the 163 Southern Pacific as the initial carrier in New York?

A. Well, it is not as strong as it is in California. Their line out of here is a water line, and they do not serve an immense big State like they do in California nor originate the business that they do in California, and naturally they have not the influence.

Q. Do they maintain active soliciting agents in New York?

A. Yes, sir; very active.

Q. Do you know how high the percentage of the New York-San Francisco business has moved over the Sunset Route at times?

A. At any time?

Q. Yes; take the apex.

A. Well, I think if you would go back into the eighties, they probably took as much as 90 per cent of the New York-San Francisco business over their Sunset Line. That has decreased, however, gradually since that time. I do not know what percentage they take now, but I would not say as much as 50 per cent.

164 Q. If it is not taxing your memory too much, can you tell me what division of the joint rate was made between the lines west of Ogden and the Union Pacific and the trunk lines?

A. The division of the rate between New York and San Francisco?

Q. Yes.

A. I think I could give you that. Without the bay transfer and the Missouri River bridge the rates divide in this way:

First, take out 25 per cent for the lines east of Chicago; of the remainder, take 15 per cent for the line between Chicago and the Missouri River; from that result, the proportion accruing to the lines between the Missouri River and San Francisco would divide: 54 per cent to the Union Pacific and 46 per cent to the Central Pacific.

That is not exactly correct, because there are some bridge and bay transfers deducted and added back, but they will not change it materially. That is the old basis and, as far as I know, it is still in effect and never has been changed.

165 Q. As you have observed it in actual railroading, if a line such as from San Francisco to Ogden is in control of a company whose only means of moving the traffic is over that line, a company which wants that traffic, is the public likely to get better, worse, or the same accommodations that it would get if that line was in control of a company that had another line, say, through El Paso and New Orleans, over which it wanted to move all of the business that it could?

MR. BLAIR. I object to that as not calling for any facts or for any expert testimony, but for a mere opinion of the witness.

THE WITNESS. Let me see if I understand you correctly. If I understand you correctly, if one ownership owns both lines?

(At the request of counsel for the petitioner the reporter repeated the pending question.)

THE WITNESS. Does not your question contradict itself there? You say that this company owns a line between San Francisco and Ogden, that it has no other way of handling this traffic, and then you say it owns another line around by the way of El Paso?

By Mr. McCLENNEN:

Q. That is the comparison I made. I put two situations 166 to you: One, this railroad from San Francisco to Ogden, owned by one company that owns no other road, but simply has its connection with other roads for a through line; that is one situation. Then I put you another case, of that road being in the control of a company which also has another line from San Francisco by El Paso and New Orleans to the terminal points, and ask you whether in the first case assumed or in the second case assumed, as you have observed railroading, the public is likely to get the better accommodations over the San Francisco-Ogden line. Or, put shortly, if a company's attention is devoted exclusively to getting traffic over the one line, San Francisco-Ogden, will the public be apt to get better service over that line or will it not, than if that company's attention is directed to getting the traffic as far as possible over another line?

A. I understand your question, I think, and I will answer it in this way: The more competition the better service the public will get.

Q. And, as a practical matter in railroading, does the control of the two lines by one company operate, by so much, as a restraint upon the competition?

A. To some extent I should say so; yes.

167 Q. I am not sure whether I have asked you in terms yet whether, in your opinion, the Sunset line is a competing line with the Central Pacific-Union Pacific line for the eastern territory that you have described.

A. Yes, sir; it is.

Q. Has enough time elapsed since the "unmerging", I will call it, of the Union and the Southern, in 1913, to be able to judge yet of what the effect has been in the way of assisting toward restoring competition of the union which had existed before 1901?

A. I do not believe I can answer that. I have not been with those lines since, and I am not familiar with it. I do not know the facts.

Q. After shippers have become habituated to sending traffic in a given way that they have been induced to follow, are they apt to keep on doing that for some time, even if the inducement ceases?

A. I have found them very changeable.

Q. Are shippers generally influenced to any considerable extent by the solicitation of freight solicitors?

A. Yes, sir.

Q. If the Central Pacific Railroad was separated from the 108 Southern so that the intermediate central lines, conspicuously the Union Pacific, had open opportunity to determine rates and matters of through freight without any influences of those interested in developing the Sunset line, what, in your opinion, would be the effect upon the traffic over the Central line?

A. Well, so far as fixing rates is concerned, it would not have any effect.

Q. And how with respect to the volume of traffic and service accommodations, getting cars, and such matters?

A. I doubt if it would have very much effect. Other lines make the competition.

Q. You mean by "other lines", which lines?

A. The Santa Fe and the San Pedro, the northern lines—there are so many lines that fix the competition. The competition is not just between two lines. All lines enter into it.

Q. What would be the effect as to the volume of traffic passing over the Central?

A. If they had their own organization in San Francisco—local?

Q. Yes.

A. Ownership there?

Q. Yes.

109 A. I think it would help.

Q. What are the means of water communication from San Francisco to the Orient at the present time?

A. The steamship lines?

Q. Yes.

A. From San Francisco to the Orient I think there are three lines: The Pacific Mail, the Nippon Yusen Kaisha, and the third line is the Toyo Kisen Kaisha. There are three lines, as I recollect.

Q. It appears that the Pacific Mail is a company controlled by the Southern Pacific. Do you know about the other companies?

A. I think the others are independent lines.

Q. There was an Oriental & Occidental Line, was there not?

A. Yes. That no longer exists.

Q. When did that go on and when did it go off? Do you remember?

A. I do not believe I could give you those dates, in and out; but soon after Mr. Harriman had control of both properties I think the

O. & O. was eliminated from the service.

170 Q. By Mr. Harriman getting control you refer to what we have been calling the merger of 1901?

A. Yes; but the Jap line was substituted at that time, as I remember.

Q. Did you know of the fact of the closing of the Roseville gateway during the period of the merger?

A. For what particular traffic?

Q. For traffic in Oregon north of Ashland and destined to points on the Atlantic seaboard and east of the Mississippi River.

A. I am not certain about that. Of course, the line never amounted to much; it never was very wide open; so the closing—we would not make much of a note of it.

Q. By "wide open" you mean jocularly to intimate that there was not a great deal of traffic moving there?

A. It never was a natural line for any of that traffic.

Q. What constitutes the opening and closing of a gateway?

A. Well, taking the rates out or putting them in.

Q. That is, it does not mean that traffic can not move through that junction?

171 A. Yes; it does. If there are no rates through a certain junction, the traffic can not move that way; it would be overcharged, because the one line would charge its local up to the junction and the other line would charge its local beyond, which might be fifty per cent higher than the through rate, so that traffic can not move without the through rates applying.

Q. That is, opening a gateway is putting in a tariff, a joint rate through that gateway?

A. Applying through that gateway.

Q. And closing it is taking that joint rate off?

A. Yes. Of course, the physical connection must be there.

Q. Did you know anything about the existence of the transcontinental agreements between the Southern Pacific and various other roads relative to through business?

A. No; I am not familiar with those.

Q. What is a differential, Mr. Schumacher?

A. I do not know that I can give you a Webster definition of a differential, but I will explain it to you in this way: One line may charge a certain rate, say, a hundred per cent rate, for the reason that it is the shortest and best line. Another line may make a rate five or ten per cent less, because it is an inferior line, so it is termed a differential line.

172 Q. Has the Southern Pacific at any time attempted to get differentials for the Sunset line?

A. I think they have tried to make it a differential line, but they have never succeeded.

Q. Why was that?

A. For the reason that it has always been considered as good a line as any between the two coasts.

Q. And when you say they have tried, I understand you to mean that they have tried to persuade the competing railroads that their line was in such a condition that they ought to have a differential?

A. Yes.

Q. Without its being regarded as a rate war?

A. Yes; largely for the reason that it is part water.

Q. That leads me to ask you: are there some kinds of freight that will not move part water and part rail?

A. Oh, there are a few commodities, but we find they are very few.

Q. Do you know whether any fruits move by the Sunset line from southern California?

A. Well, by the rail lines, a great deal of it.

Q. That is, coming through El Paso; and how far over the Southern Pacific?

173 A. Well, via the El Paso route and by the different gateways in Texas, several different gateways, they move California fruits of all kinds; for instance, citrus fruits going into the Southern States they move to New Orleans, and deciduous fruits may move that way, too.

Q. Does the time of the year or the temperature affect at all the possibility or feasibility of shipping fruits by the Southern line?

A. Yes, sir.

Q. Prior to the opening of the Western Pacific, was the Union Pacific absolutely dependent on the Central Pacific for getting into California?

A. Oh, they could get in there by the way of Portland and water.

Q. That is, by going up over the Oregon Short Line to Portland and then down by water?

A. Yes; but it is not a very desirable route, and not worked very strong at any time. The more they worked it the worse they were off.

Q. If I am not borrowing, was it a "practicable" route?

A. No; I never regarded it so, because I tried to get the business that way.

174 Mr. BLAIR. We might interpose the objection of estoppel, as the Government contended exactly the contrary in the Union Pacific merger case, and the Government counsel in their brief, and the Supreme Court agreed.

The WITNESS. That it was a practicable route?

Mr. BLAIR. Yes.

The WITNESS. If they had to solicit business like I did, they would not have thought so.

Mr. BLAIR. It shows the ingenuity of Government counsel.

Mr. McCLENNEN. I am afraid my esteemed friends are paraphrasing the Supreme Court rather freely in the description they give of what the Supreme Court said.

That is all, Mr. Schumacher.

Cross-examination by Mr. BLAIR:

Q. Mr. Schumacher, will you name the principal now existing through all-rail lines for transcontinental traffic between the Atlantic seaboard and, say, northern and central California points? Probably you might best describe them by their western connections.

A. You mean the western connections of the lines going into Chicago and St. Louis?

175 Q. I mean to suggest that you could probably more definitely describe them by beginning with the—

A. (Interposing.) California lines?

Q. Yes.

A. And radiate from California?

Q. Yes.

A. I do not know how accurately I can give that. I am a little rusty on those things. However, I will try. The Southern Pacific Sunset Route and its connections—shall I name the different gateways?

Q. Yes; you might name the different gateways.

A. Its connections at Tucson, El Paso, Alpine, San Antonio, Houston, New Orleans; there is an intermediate point there where they connect, I think, with the Kansas City Southern; I do not recall the junction.

Q. And they connect at El Paso with the Texas & Pacific?

A. Oh, yes; Texas & Pacific. There are two connections there at El Paso; and Beaumont for the Kansas City Southern. I may have omitted the Frisco junction. I know they have a connection there, but I do not know the name of the junction.

Q. That is one set of all-rail transcontinental lines?

A. Yes.

176 Q. Now, what other set?

A. We will take the Atchisen next. They have a connection with the Colorado & Southern through Pueblo, the El Paso & Southwestern at Vaughn, New Mexico; the Frisco at Medora, Kansas, I believe. Then they connect with the Mallory Line at Galveston, and at the Missouri River with all the Missouri River lines.

Q. Have they not a line from San Francisco to Chicago?

A. Yes.

Q. A direct line?

A. A line direct from San Francisco and all California points, practically all of them, to Chicago, where they connect with all the eastern lines.

Q. What others?

A. Then we have the so-called San Pedro route from Los Angeles to Salt Lake. It there connects with the D. & R. G., the Oregon Short Line, Union Pacific, and all of its connections—all of the connections of those lines east.

Q. That are controlled by the Union Pacific?

A. Or the D. & R. G.; they connect with both.

Q. It is controlled by them with the Union Pacific?

A. Yes; they are equal owners, I think. Then we come north to the Central Pacific. They connect at Ogden with the Union and the Denver & Rio Grande; and, of course, through those lines, have access to all of their eastern connections, which practically means every railroad east of the Missouri River.

Q. You have the Western Pacific?

A. And then the Western Pacific, which connects at Salt Lake with the D. & R. G.; and they also have an arrangement to work with the Union Pacific through the Oregon Short Line and the Union Pacific. Their connection is practically the same as the Central Pacific.

Q. It might be said that the Central Pacific, the Union Pacific, and its connections make one line, and the Western Pacific and Denver & Rio Grande are a closely affiliated line, are they not?

A. The Western and the D. & R. G.?

Q. Yes.

A. Yes; one ownership.

Q. You have modestly omitted your own line.

A. The Rock Island? The Southern Pacific does not connect directly with the Rock Island at El Paso. They connect with the El Paso & Southwestern, and we connect them with the Rock Island on the north.

Q. So that makes another line?

A. Yes.

Q. And the Rock Island reaches Chicago in that way?

A. Yes.

Q. Through—

A. (Interposing.) Chicago, St. Louis, and Memphis are our principal eastern points.

Q. Would it not be correct to say that the main line, the more direct line, that runs from northern and central California points to the Atlantic seaboard territory is the line made by the Central Pacific, the Union Pacific and its eastern connections, the Western Pacific, the Denver & Rio Grande and its eastern connections, the Santa Fe running through to Chicago, and the Southern Pacific and Rock Island reaching to Chicago?

A. Yes.

Q. They are the more direct, the principal lines for the traffic that I am referring to?

A. Yes.

Q. Which of those lines were not in existence in 1901? Was the Western Pacific and Denver & Rio Grande combination in existence? I know the Denver & Rio Grande was, but was the Western Pacific

A. The Western Pacific was not.

179 Q. The Rock Island had not been completed in 1901?

A. No. Well, the Rock Island connection into El Paso had not been completed.

Q. Are there not now two mixed rail and water lines which offer alternative routes for the movement of traffic between the points I have named?

A. By the Gulf ports?

Q. Yes.

A. Yes.

Q. One of these is the Sunset-Gulf route we have heard so much about?

A. Yes.

Q. What is the other?

A. The other water line?

Q. Mixed rail and water line. What does the Santa Fe do?

A. The Santa Fe have a connection with the Mallory Line. The T. & P. also have a connection with the Mallory Line.

Q. The T. & P. does not reach San Francisco?

A. It connects with the Sunset at El Paso, and from there goes on to New Orleans, and has a service with the boat line; that is, with the Morgan Line; but they can reach the Mallory Line through Galveston, by way of the I. & G. N.

Q. That furnishes a mixed rail and water line?

A. Yes.

Q. And the Santa Fe from San Francisco, in connection with its affiliated lines in Texas, reaches the Mallory Line at the Gulf, and

has a close working arrangement with them for a through mixed  
mail and water line from California to the Atlantic seaboard terri-  
tory?

A. Yes.

Q. Are there not some other lines, known as the Isthmian lines,  
which furnish alternative routes for traffic between northern and  
central California and the Atlantic seaboard?

A. Yes.

Q. Which are those two?

A. Well, the Pacific Mail—I suppose they are still in the busi-  
ness—in connection with the Panama Railroad and Panama steam-  
ships.

Q. I am not speaking of the events in the last two or three months.

A. No. Well, then, this Pacific Mail, in connection with the  
Panama Railroad and the Panama Railroad steamships on the east  
side; the Pacific Mail on the west coast. That makes a through  
line by the way of Panama.

181 Q. And which is the more powerful of the water lines that  
have come into existence in recent years?

A. The American-Hawaiian.

Q. And where is its route?

A. It has been by way of the Tehuantepec Railroad across the  
Isthmus of Mexico, but recently they have started through the canal.

Q. The American-Hawaiian Line was not in existence through  
the Isthmus of Tehuantepec or through the Panama Canal in 1901  
prior thereto?

A. No.

Q. So that since 1901 there have been additional transcontinental  
lines for the movement of traffic between northern and central California  
and the Atlantic seaboard territory?

A. Yes.

Q. Now, the traffic passing between those territories, I suppose, is  
large and valuable in amount?

A. Yes.

Q. And increasing, is it not?

A. Yes.

Q. Is it not contested for by these different through lines that you  
have mentioned, you and I together?

182 A. Yes.

Q. Is the contest vigorous or sluggish?

A. Vigorous.

Q. And active?

A. Yes.

Q. Now, take the Central Pacific-Union Pacific lines, whatever  
that traffic it now secures it gets in competition with the other

railroad lines, and as a general rule in competition with the Isthmian lines and the mixed rail and water lines?

A. Yes.

Q. Is it able to strive successfully for a portion of this traffic?

A. The Union and Central Pacific?

Q. Yes; now?

A. Yes.

Q. Would it not be true to say that it is the strongest competitor for that traffic now?

A. You mean to San Francisco?

Q. Yes.

A. Yes.

Q. By strongest you mean the most successful?

A. Yes.

183. Q. Notwithstanding all this competition?

A. Are you speaking of the Atlantic seaboard business?

Q. I am speaking of the Atlantic seaboard business, but not exclusively from the city of New York.

A. I will change my answer on that. I do not consider the Union and the Central Pacific strongest from the Atlantic seaboard. I think the Sunset is.

Q. Is it the strongest of the all-rail lines?

A. Yes.

Q. Have you any figures which would enable you to say with any degree of confidence that, taking the Atlantic seaboard territory as a whole and not confining your attention exclusively to the city of New York or the port of New York, that the Sunset-Gulf route now carries more of that traffic than passes over the Central Pacific-Union Pacific line?

A. Well, I do not know; I could not answer that accurately; but my thought is that the Sunset carries more than any one line; not more than all the all-rail lines, but more than any one.

Q. Is it a more powerful competitor for that class of business than the American-Hawaiian Line?

184. A. Well, since the American-Hawaiian Line is operating through the canal I should say that they are the strongest now.

Q. They are the strongest line now?

A. Yes.

Q. Now, is there not some of this traffic which, either by reason of its character or by reason of its packing, does not admit of transhipment, and the competition therefor is limited to the all-rail lines?

A. Oh, there are a few commodities.

Q. There are a few commodities, but are they not important in volume?

A. Well, some of them are important. Take the fruit; the green fruit, of course, does not move through the Gulf ports, and that is a very important commodity.

Q. It is very important both in amount and in value?

A. Yes.

Q. That would include perishable fruit, which requires refrigeration or ventilation?

A. Yes.

Q. That is a kind of traffic that is very desirable?

A. Yes.

Q. And vigorously competed for?

A. Yes.

Q. That would include deciduous fruit, citrus fruit, vegetables, oysters, and fresh meat, would it not?

A. Yes.

Q. Then is there not a great deal of traffic which goes packed in bulk which can not be unloaded in transit?

A. Well, we used to think so, but we are getting away from that. We find that we can handle nearly all of it over the water lines.

Q. And even that shipped in tank cars?

A. Not tank cars.

Q. Well, a good deal of it goes in tank cars?

A. Not very much.

Q. Wine, asphalt, and oil?

A. We can handle wine all right in bulk; we are doing it every day.

Q. And freight stored in cars in bulk?

A. Yes.

Q. And freight which by reason of its character must be loaded on the car and run to destination?

A. Well, there are a few commodities which will not permit of transfer, but very few of them.

Q. I am not dealing so much with the number of commodities, but upon the value of the traffic. The possibilities from that would represent quite a large figure, would they not?

A. Yes.

Q. It is very valuable traffic?

A. Very.

Q. How about automobiles?

A. I do not know that any of them have ever been handled by us; that is a large figure, a large traffic.

Q. There is a considerable movement in that commodity?

A. Yes.

Q. As a general thing these through rates on transcontinental lines are the same over the different roads?

A. Yes.

Q. Rates do not, then, cut much of a figure in the striving for the traffic?

A. No.

Q. And how do the different lines go about it in securing this traffic? What agencies do they put to work to secure it, each for its own line?

187 A. Well, they have solicitors that go around to the different shippers and beg for the business, day in and day out.

Q. Who controls the routing of traffic nowadays, at the present time?

A. Well, usually the man in charge of the shipping of a large institution, or a small one for that matter.

Q. In other words, the shipper?

A. The shipper; yes.

Q. Now, take the westbound traffic from the Atlantic seaboard to northern and central California points, how is that solicited for?

A. Westbound from Atlantic seaboard to central and northern California points?

Q. Yes; how is it solicited for?

A. It depends on the solicitor. If it was a Northern Pacific man he would solicit for his road, and if it was a Union Pacific man he would solicit for his road.

Q. Then it is solicited for by agents or representatives of the different railroads forming part of the different lines?

A. Yes.

Q. And that solicitation takes place at what end?

188 A. Sometimes at both ends of the lines. They solicit both the consignee and the consignor.

Q. In other words sometimes the consignor controls the routing of the traffic and sometimes the consignee?

A. Yes.

Q. And the result of that is that the different lines taking part in these different through routes maintain soliciting agents both in the east and in the west?

A. Yes.

Q. And those soliciting agents, in case of a westbound shipment go after the consignor in the east and go after the consignor in the west?

A. Yes; they work every way they know how.

Q. Have the western lines, the Rock Island, the Santa Fe, the Union Pacific, the Western Pacific, and the Denver & Rio Grande eastern sales agents?

A. Yes.

Q. And that is true of the Isthmian lines?

A. Yes.

Q. And true of the Sunset-Gulf line?

A. Yes.

Q. And these different soliciting agents try to secure the forwarding of traffic over their lines?

A. Yes.

189 Q. Over the line they represent?

A. Yes.

Q. Is the competitive solicitation between these lines or routes that I have mentioned mild or vigorous?

A. Vigorous.

Q. And active?

A. Yes. There is not enough business to go around.

Q. Now, we have had some talk with respect to the traffic between the Atlantic seaboard territory and northern and central California to be preferentially solicited by the Southern Pacific via the Sunset Route. When the Southern Pacific agent is trying to secure this traffic is he the only Richmond in the field?

A. No.

Q. He meets with the Union Pacific and its eastern connections in striving to get that traffic by the Ogden route?

A. Yes, they are all there trying to get it.

Q. And the consignor sits up and determines by which route his traffic shall go?

A. Yes, usually the consignor on that business.

190 Q. And would not what I have said in respect to solicitation by these different roads apply to east bound traffic between the same points?

A. Yes.

Q. Was that true substantially in 1901 and prior thereto as to the lines then in existence?

A. Well, there were not so many lines, but there were enough lines to make the competition.

Q. If there has been any change there is more competition now than there was in 1901?

A. Yes.

Q. You have spoken of the through line formed by the Central Pacific and the Union Pacific and its eastern connections, that through line offering an alternative or competitive route for the Sunset-Gulf Line, we will say. Do you mean that that was theoretical competition, or is it actual?

A. It is actual.

Q. And always has been within your memory?

A. Yes.

Q. Except I suppose from the time of the merger?

A. Yes.

Q. Now, as to your connection with the Union Pacific; during 191 your connection with the Union Pacific was there a through service over the Central Pacific and Union Pacific via Ogden?

A. Passenger or freight?

Q. Both?

A. Both.

Q. Joint rate?

A. Yes.

Q. Through contracts of shipment?

A. Yes.

Q. Through passenger tickets?

A. Yes.

Q. Through freight trains?

A. Yes.

Q. Were those arrangements for through service over the Ogden Route such as to admit a movement of through transcontinental traffic over that route?

A. Yes.

Q. What was the relation between the Union Pacific and the Southern Pacific prior to 1901; friendly or unfriendly?

A. Very friendly.

Q. Which route was preferred in connection with the Southern Pacific for traffic that did not pass over the Sunset Route?

A. Well, I used to think they preferred the D. & R. G., but the D. & R. G. man thought that they preferred me, so that I do not believe we can decide that. The eastbound business at Ogden divided about 45 and 55 per cent, 45 per cent to the Denver & Rio Grande and 55 per cent to the Union Pacific. I used to think the Denver & Rio Grande got too much.

Q. Was that determined in any way by the amount of delivery which those lines made to the Union Pacific or made to the Central Pacific?

A. That was a factor, but not the only one.

Q. That was what the Southern Pacific strove to observe, was it?

A. Yes.

Q. Now, were there not arrangements for handling through traffic such as I have described prior to 1901, satisfactory to the Union Pacific?

A. Yes.

Q. You never made any complaint in regard to that?

A. No.

Q. Do you know whether there still exists these through traffic through service, and through rates?

193 A. Yes.

Q. At the present time by the Ogden Route?

A. Yes; I think the service is better, if anything, than it was then.

Q. Do you know of any two connecting lines under independent management which have any closer relations for operation as one continuous line than exist between the Southern Pacific and the Union Pacific via Ogden?

A. No.

Q. So, so far as the public is concerned in regard to rates and time of transportation, they are operated as one continuous line, are they not?

A. Yes.

Q. You spoke of a quite large percentage that the Southern Pacific secured for the Sunset-Gulf Route in the eighties. Was that not due to the fact that the service on all the all-rail lines for through business was not very good?

A. Well, that probably had something to do with it; but I think there were other reasons more potent than the service.

Q. Well, has not the proportion which the Sunset-Gulf Route secures of this transcontinental business been a greatly diminishing quantity?

194 A. Yes.

Q. From year to year?

A. Yes.

Q. And it is less strong in influence now than it was at any time?

A. Yes; it is decreasing.

Q. And likely to be decreased in the future with the opening of the Panama Canal?

A. Yes.

Q. So that the outlook is that whatever empire or dominion the Sunset-Gulf Route exercised over the traffic passing from California to the Atlantic seaboard territory is a past empire or a failing or receding control?

A. I should think on the wane.

Q. The service over the all-rail lines is very much improved since 1901?

A. Very much.

Q. The ability of the Southern Pacific to offer superior service—if it ever had that ability—is less now than it ever was, is it not?

A. Well, it has grown less in the last few years.

195 Q. You spoke of the condition of the Central Pacific line from 1894 to 1898, and you stated that its present condition was very much better?

A. Yes.

Q. That would be true of pretty nearly every railroad, would it not?

A. Yes. But I think the Central is quite marked in its improvement.

Q. And the Union Pacific has been quite marked in its improvement?

A. Yes.

Q. Now, in regard to transcontinental passenger service, were you speaking of passenger service by the Sunset-Gulf Route?

A. Yes.

Q. How long did it take a passenger to go from New York by ship to New Orleans and thence to San Francisco?

A. I think the time from here to New Orleans is five days by ship, and from there to San Francisco—well, I do not know what the schedule is now, but it is longer than it is from Chicago, I think.

Q. How long does it take them to go from San Francisco to New York via Ogden?

196 A. Well, it is possible to make the run in four days.

Q. So that you have a nine-day run on one hand and a four-day run on the other?

A. Yes.

Q. Have you any idea as to the relative amount of passenger business which goes over the Ogden Route as compared with the passenger business which goes over the Sunset-Gulf Route via New Orleans?

A. I can not speak as to figures; I suppose it is greater by Ogden.

Q. In 1901 and prior thereto the Union Pacific had only one line to make use of between Ogden and San Francisco—the Central Pacific?

A. Yes.

Q. And now has two lines, the Western Pacific also?

A. Yes.

Q. In 1901 and prior thereto the Union Pacific had a line to Portland and then from Portland by water to San Francisco, did it not?

A. They had a line; yes.

Q. We are influenced by the contentions made on the one side in the Union Pacific merger suit, and you might call that a retaliatory line. Now, what other line was there reaching into California, into the Pacific Ocean? What other line has it control of?

A. The San Pedro.

Q. That is a good strong line, is it, and goes into Los Angeles?

A. Yes.

Q. In 1901 the Hepburn bill had not been passed, had it?

A. I hope it was not.

Q. And the Interstate Commerce Commission had no authority to compel connecting lines to make through routes and through rates?

A. No; my recollection is that they don't undertake anything of that kind.

Q. In 1901 the shipper had not the right by law to direct the routing of the traffic?

A. I do not know about that.

Q. Assuming, then, that in 1910 the Interstate Commerce Commission for the first time required the railroad companies to observe the routing directions of shippers; assume that, and also assume that since 1901 the Interstate Commerce Commission has had the right not only to establish through routes and through rates with connecting lines, but to establish reasonable divisions, if they meant to agree among themselves?

A. Yes.

Q. Now, taking into consideration all these changes since 1901, would you say that the Union Pacific is more or less at the mercy of the Southern Pacific by reason of its control of the Central Pacific now than it was in 1901?

A. I do not see that their condition has changed very much; I do not think they are very much better off now than they were then or very much worse off then than they are now.

Q. Are they more or less at the mercy of the Southern Pacific now than they were then?

A. They are not any more at the mercy of the Southern Pacific.

Q. Are they not very much less?

A. I don't think so. They have another connection, which is more helpful to them than anything else.

Q. And the Southern Pacific could be required by the Interstate Commerce Commission to establish through rates with the Union Pacific?

A. Yes.

Q. It could be compelled to make fair divisions with them?

A. Yes.

Q. The Union Pacific has two retaliatory lines now where it had one in 1901?

A. Well, not to San Francisco.

Q. What is that?

A. They have one line to San Francisco and one to Los Angeles. They have not two lines to San Francisco; that is, two other than the Central.

Q. They have a line to Portland.

A. I don't call that a line at all, and never did.

Q. We tried for years, I understand, not to call it a line, but the Supreme Court put it on the map.

A. Well, it is not on my map.

Q. And that high authority having put it on the map, we should try to keep it there.

Mr. McCLENNEN. I think we ought to object to your incorporating in that question a statement of fact not yet in evidence.

Mr. BLAIR. Before I asked the question I established the existence of the line via Portland and also the control of the Union Pacific over the line to Los Angeles.

200 Mr. McCLENNEN. My objection was directed to the accuracy of your description of what the Supreme Court had said or done.

Mr. BLAIR. That is something so easy of correction by the Supreme Court that if it is not correct it will hardly do any harm.

Mr. McCLENNEN. I thought it would be more apt to do good, so far as that is concerned.

Mr. BLAIR. Then I am surprised that you object to it.

Mr. McCLENNEN. I was afraid the gift would be overlooked.

201 Redirect examination by Mr. McCLENNEN:

Q. Mr. Blair has spoken of the different lines of communication from San Francisco to the East, and among others he mentioned the Panama route formed by the Pacific Mail Steamship Company and the Panama Railroad and the boats on the east side of Panama. That is the same Pacific Mail Steamship Company which is controlled by the Southern Pacific?

A. Yes.

Q. You assented to Mr. Blair's question to the effect that there were no two separate lines forming a continuous route which were more closely connected than the Central and the Union. Do you refer in that answer to anything more than physical connection?

A. Yes; the physical connection, and they make through rates, run through trains, their working arrangements generally are friendly to the territory other than Sunset territory.

Q. Did you mean any more than what you have now described by your answer?

A. No.

202 Q. There are connecting lines which form a continuous line where both of the connecting lines seek to throw all the traffic possible over the connection, are there not?

A. Yes; there are cases of that kind; usually the same ownership, however.

Q. That might be described as a more close union than a line the operators of which were seeking to divert to a certain route as much of the traffic as possible?

A. There may be connections that work 100 per cent with each other. The Central and Union do not, but aside from their Sunset territory, I do not believe two lines could work any more closely together than the Union and Southern or Central.

Q. But so far as Sunset territory is concerned, the reverse is true?

A. Yes, sir.

The Southern Pacific would favor their long haul.

Q. The connection between the Western Pacific, for instance, and the Denver & Rio Grande, and the connection between the El Paso & Southwestern and Rock Island, is much closer than that between the Central and the Union?

A. I would not say "much closer"; they are closer, because they work practically all business in connection with each other, although they have other affiliations; but probably not as much so as the Southern Pacific has with its Sunset line.

Q. You also, as I understand, assented to Mr. Blair's statement that the Union and the Central were operated as one continuous line. By that you, of course, meant, among other things, that they had joint rates, that there were through trains——

Mr. BLAIR. Counsel objects to counsel for the petitioner leading his witness and practically answering his questions for him.

(By request, the reporter read the pending unfinished question.)

By Mr. McCLENNEN:

Q. Did you mean to include more than that; and if so, what?

A. No; I think that covers it.

Recross-examination by Mr. BLAIR:

Q. Mr. Schumacher, the fact that the Southern Pacific sometimes solicits traffic for its Sunset Route which would otherwise pass over the Ogden route or some other through-rate line—does that interfere with the arrangement for through service via the Ogden route?

A. No.

Q. It does not have any effect upon that?

A. No, sir.

Q. The soliciting or routing of traffic has no essential connection with the existence of arrangements for the handling of through traffic so as to make the two connecting lines a continuous line for the passage of freight?

A. No.

Q. Counsel asked you about a line of steamships to Panama, the Pacific Mail. Is there not another line in operation, the Luckenbach line?

A. I do not know about it.

Q. You are not prepared to say whether or not there is another line in operation than the Pacific Mail?

A. No; I do not know about it.

By Mr. McCLENNEN:

Q. Does the soliciting done by the Southern Pacific for the Sun Route have the effect of diminishing the amount of traffic which normally would go over the Central and Union, or does it not?

A. Yes.

(Whereupon an adjournment was taken until to-morrow, Wednesday, September 23, 1914, at 10.30 o'clock a. m.)

ROOM 720, CUSTOM HOUSE,  
New York City, September 23, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClellan and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.; and Mr. Trafford, for the Union Trust Company of New York.

Mr. McCLENNEN. Please note upon the record that it is agreed between counsel for petitioner and the counsel for the defendants that the petitioner is not to be taken, by virtue of the stipulation contained in petitioner's Exhibit No. 14, to have conceded the validity of the deed of July 29, 1899, from the Central Pacific Railroad Company to the Central Pacific Railway Company noted on that exhibit under the list of officers for the year 1900.

Also, please note, without agreement, to avoid any misunderstanding, that none of the stipulations made or to be made are to be taken as an admission by the petitioner of the validity of the lease from the Central Pacific Railroad Company to the Southern Pacific Company of February 17, 1885.

206 The petitioner reserves the right to attack the validity of this lease under the claim, of which the petitioner gives notice, that this lease is invalid as being in violation of the rights of the stockholders of the Central Pacific Railroad Company and of the public, not properly authorized, and *ultra vires*, and not permitted under the Federal legislation accepted by the Central Pacific Railroad Company, and not permitted by the charter of that company, and not permitted by the statutes and laws of the State of California, or by the constitution thereof.

WILLIAM SPROULE was called as a witness on behalf of the petitioner and, being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. Your residence?

A. San Francisco, California.

Q. And your address?

A. Personal?

Q. Or business.

A. Flood Building, San Francisco, is my business address.

Q. You are the president of the Southern Pacific Company?

A. Yes.

Q. Do you hold any official position in the Southern Pacific Railroad Company, the Central Pacific Railroad Company, or the Central Pacific Railway Company; and if so, what?

A. I am president of the Southern Pacific Railroad Company. I am a director in the Central Pacific Railway Company, I believe is the corporation, and I may be a director in the Central Pacific Railroad Company, but I do not recall for the moment. The manual that counsel has will show that.

Q. You are one of the persons named as defendants in this case?

A. I am.

Q. You are temporarily in New York on other business of the company?

A. Yes.

Q. How long have you been connected in any way, as employee or otherwise, with any of those four companies just mentioned?

A. From 1882 to 1906 and from 1911 to date.

Q. Your connection from 1911 to date has been as at present?

A. As at present.

Q. During the five years from 1906 to 1911 were you not associated in any way with any of those concerns?

A. I left the service in 1906.

Q. From 1882 to 1906, will you please state the different capacities in which you served from time to time and with which companies?

A. I was in clerical capacities from 1882 to 1887. I became assistant general freight agent in 1887, general freight agent in the beginning of 1898, and freight traffic manager later in that year. That position I retained until I resigned from the company's service in 1906 to engage in other business.

Q. In what department of the work were you engaged clerically from 1882 to 1887?

A. In the freight department, under the general freight agent; subsequently under the freight traffic manager, and then under the general traffic manager.

Q. Were your positions from 1882 to 1887 such as to make you conversant with the general courses of the movement of freight over the Southern and Central Pacific Railroads?

A. In a general way, yes.

209 Q. Were you in the railroad business from 1906 to 1911?

A. No; I was in the express business in 1911.

Q. What concern?

A. Wells-Fargo & Company. I was its president.

Q. President of Wells-Fargo & Company during that period?

A. Yes.

Q. Is that a company that is affiliated in some way with the Southern Pacific Company?

A. No affiliation.

Q. I want to ask you a few questions relative to the map, Petitioner's Exhibit No. 1. Will you note this purple marking and see whether or no it represents correctly the lines of the Central Pacific Railroad?

A. I think so. On that small scale it is hard to tell whether the lines are precise, but in a general way that shows it.

Q. Does the marking in red upon the same map correctly represent the lines operated or controlled by the Southern Pacific Company, other than the Central?

A. I think so.

Q. Do the lines in blue correctly represent the lines operated by the Union Pacific Railroad?

210 A. Those are the lines of the Union Pacific Company. We have no line at present, or in contemplation, from Grants' Pass in southwestern Oregon running, as shown on the map, toward the coast. The hatched lines on this map from Kirk in the southern part of Oregon to Oak Ridge, shown in hatched lines in purple, have not been constructed. Also the line from Eugene Junction in the western part of Oregon, running west and south to Myrtle Point, is under construction, but has not been completed. Also the line from Fernlee in the western part of Nevada to and through Susanville in the eastern part of California, shown here in red, should be shown in purple, as it is owned by the Central Pacific Railway Company. Also the line in red from Harrington, in the north central part of California and running northerly toward Calusa, is under construction. The line from Hazen in the western part of Nevada to Mojave in the southern part of California, shown in purple, that part which is between Mina in the western part of Nevada and Owenyo in the eastern part of California is narrow gauge. The line in red running north from Maricopa in the southern part of Arizona, and from Bowie in the southeastern part of Arizona, shown in red, are properties of the Arizona Eastern Railroad Company.

111 Q. The entire capital stock of the Arizona Eastern Railroad Company is owned by the Southern Pacific Company?

A. Yes, sir.

Q. Do you know approximately how long the company has owned the whole or a majority of the stock of that company?

A. I do not.

Q. A part of this line, indicated in red on this map, is made up of the Galveston, Harrisburg & San Antonio Railway Company?

A. Yes; that is east of El Paso.

Q. The capital stock of that company outstanding, stated in dollars at par, is \$27,084,372, of which the Southern Pacific Company owns \$27,055,900?

A. As to those matters, if you do not wish to accept the figures that are shown in the annual report, I would suggest that you ask those questions of the comptroller, because these are questions with which I, as the operating officer in charge of the Southern Pacific properties, do not myself deal.

Q. I understand. I am taking these right from the annual reports as the simplest way of getting them in the record.

112 A. I do not wish them to be given as answers from myself.

Q. It would be correct to say that that is what is shown in the annual report of the company?

A. If that is what is in the annual report, yes.

Q. The tracks of the Galveston, Harrisburg & San Antonio Railroad Company, the main line of them, runs from what point to what point?

A. El Paso to Houston.

Q. I am correct, am I, that the annual report of the Southern Pacific Company shows that the capital stock of the Louisiana Western Railroad Company, in dollars at par, is \$3,360,000, all of which is owned by the Southern Pacific Company?

A. Yes, sir.

Q. The line of that railroad is from what point to what point?

A. From New Orleans—I forget its junction with the G. H. & S. A. Mr. BLAIR. It extends from at or near the boundary line between the States of Texas and Louisiana to Lafayette, formerly Vermillionville, in the State of Louisiana; that is the Louisiana Western.

Mr. McCLENNEN. And is part of the main Sunset line?

Mr. BLAIR. It is a part of the Southern Pacific system and is a part of what you have designated as the Sunset Route.

By Mr. McCLENNEN:

Q. Am I right that the annual report of the Southern Pacific Company shows that the capital stock of the Texas & New Orleans Rail-

road Company, stated in dollars at par, is \$5,000,000, of which the Southern Pacific Company owns \$4,999,100?

A. Those are the figures, as shown on page 46.

Q. What are the termini of that railroad?

A. It connects the G., H. & S. A. with the Louisiana Western Railroad Company. I am not familiar with the junction points down in that country.

Q. Am I right that the same report shows that the capital stock of the Morgan's Louisiana & Texas Railroad & Steamship Company, stated in dollars at par, is \$15,000,000, all of which is owned by the Southern Pacific Company?

A. It is so shown on that page of the annual report, yes.

215 Q. What are the termini of that railroad?

A. Can you answer that, Mr. Blair?

Mr. BLAIR. That railroad runs from Lafayette to New Orleans, but it has extensive branches in other directions. That may be said of the Texas & New Orleans Railroad Company. It has extensive branches which do not form a part of the Sunset Route.

By Mr. McCLENNEN:

Q. The same report shows that the total outstanding stock of the Southern Pacific Railroad Company, stated in dollars at par, is \$160,000,000, all of which is owned by the Southern Pacific Company.

A. Yes.

Q. That road runs, with numerous branches, from San Francisco, California, to El Paso, Texas?

A. Yes.

Q. Do you know how long any of these ownerships have been, substantially as described in this report?

A. Any of them?

Q. Yes.

216 A. Originally, in 1882, when I went with the company, it was the Central Pacific. In 1885 it became Southern Pacific, and many of these lines were then built; others of them have since been built. They were constructed for purposes of public travel and interlaced from time to time as demand for the transportation caused construction, and the convenience of financing placed them with either company.

Q. When you say that it was "Central Pacific" and became "Southern Pacific" you are referring, I take it, to the operating title, not meaning to convey the idea that there was a change of name of the same corporation?

A. I refer to the operating title.

Q. The Southern Pacific Company did not come into existence at until the latter part of 1884; is that correct?

A. So I believe.

Q. In 1882, when you went with the company, the Southern Pacific Railroad Company of California and of Arizona and of New Mexico had the ownership of a line extending from San Francisco to El Paso?

A. Yes.

Mr. HERRIN. From Goshen to El Paso.

The WITNESS. That is right; from Goshen to El Paso. They also had a line from San Francisco to Soledad, as I remember, Coast Line Southern Pacific Railroad, California.

By Mr. McCLENNEN:

Q. That line was a part of what has since become the Coast line?

A. Yes, sir.

Q. It was subsequently completed into Los Angeles?

A. Into a junction with a line to Los Angeles.

Q. When you went with the company, in 1882, the Southern Pacific Railroad Company connected physically at El Paso with the lines of the Galveston, Harrisburg & San Antonio Railroad; is that correct?

A. I think that is correct.

Q. But the line eastward has not been completed far enough to give a complete line to New Orleans?

A. I think it had been completed in 1882.

Q. Would it conform to your memory that the completion of that line and the opening of it as a physical matter was the first of February, 1883?

A. Of course, at that particular time I was not in position to charge my memory with those matters, but I know the Sunset Route opened immediately following my joining the company. I joined in October, 1882, so I suppose it was probably in the beginning of 1883. The line, of course, is readily accessible.

Q. Did you know about those railroads at all before going with the company?

A. No; that was my entrance into railroad service. I entered at that time as a junior clerk. That was my first entrance into the railroad business.

Q. Prior to the opening of that line to New Orleans, which, if there is no objection, I will ask you to take as February 1, 1883, the entrance by rail into California for transcontinental business through Ogden over the line of the Central Pacific Railroad, or over the line of the Atlantic & Pacific, which has since become the Atchison, meeting the Southern Pacific Railroad at Dem-

ing, New Mexico, and entering California through Yuma, on the boundary line of Arizona and California.

A. Yes. The Texas & Pacific also had connected January 1, 1882, at Sierra Blanca with the tracks of the Galveston, Harrisburg & San Antonio Railroad, and so, through El Paso, with the tracks of the Southern Pacific Company.

Q. Then in 1881 El Paso became for the first time a gateway into California for transcontinental freight?

A. So I understand.

Q. Prior to that time the tracks of the Central Pacific were the only means of reaching California by rail for transcontinental business?

A. Yes.

Q. The only competition up to that time with the Central Pacific Railroad on transcontinental business was the water competition?

A. Water competition, including the Isthmus of Panama.

Q. That is, there was a line of steamers from New York to Colon, and railroad tracks across the Isthmus to Panama, and a line of steamers to San Francisco?

A. Yes.

Q. Was there any regular line around the Horn?

220 A. My recollection is that there was one or more.

Q. There was, at all events, considerable traffic by clipper ships around the Horn?

A. Yes; Funch, Edye & Company.

Q. It is evident as a matter of knowledge of a railroad man that the completion of an independent line to New Orleans with connections to New York would inevitably bring strong competition with the Central Pacific Railroad; am I right?

A. There would be competition, and the competition would also be with the water lines.

Q. If a transcontinental line or a line mixed water and rail entering California through Arizona was in contemplation and imminent, was there, as a matter of railroading, any way of preventing the competition with the Central except by discouraging or preventing the completion of that line or acquiring control of it?

(The question was repeated by the reporter.)

A. I do not know how to answer that question. Was there any means of discouraging the competition?

(The question was again repeated.)

221 A. (Continuing.) I do not see that discouraging or preventing it has anything to do with the case, because neither was done. The fact is that the line was built, and as soon as built necessarily entered into competition. It was very much better for the Central Pacific, of course, that it should be in hands that were

friendly to the Central Pacific; but so far as the public interest was concerned, the lines were constructed and at the public service and to the public advantage.

Q. That is, the joint control of the two lines would inevitably reduce the sharpness of the competition?

A. Well, it was one control; it was not two or more controls. The control was a unit. It was controlled by the same people; that is, the Central Pacific line was built from California east and the lines of the Southern Pacific Railroad were built from California east, but they were both built and all built by the same people and the same interests, and the question of corporate name was merely one of convenience.

Mr. McCLENNEN. The petitioner moves to strike out the answer as not responsive to the question.

By Mr. McCLENNEN:

Q. I have not asked you in this question what was done, but the effect of the state of facts which I recited in the question. I will ask to have the question read and will ask you to follow the question and answer that as nearly as you can.

Mr. DUNNE. That is objected to as not calling for testimony of my fact, but simply as an argument in the question, based upon hypotheses of one sort or another.

(The question was again repeated by the reporter.)

Mr. DUNNE. We add to our objection that it assumes the existence of a joint control, the witness answering responsively that it was a single or unitary control.

(The question was again repeated by the reporter.)

The WITNESS. I answered that the control was not joint. It was unit of control.

Mr. McCLENNEN. I ask that the answer be stricken out as not responsive, and the second part of the answer stricken out as not responsive.

By Mr. McCLENNEN:

Q. If the operations of the Central Pacific Railroad and the operations of the Sunset line were under a single control, it would inevitably reduce the sharpness of the competition between the two lines, would it not, on transcontinental business?

Mr. DUNNE. Just a moment. We object to that question as without foundation, purely speculative and argumentative, and self-contradictory.

(The question was repeated by the reporter.)

The WITNESS. That question assumes that the Central Pacific is a through line, which it is not. It is only a link in the through line.

It is a through line that makes the competition. The line from Ogden to San Francisco does not compete with a line, for example, from San Francisco to New Orleans.

By Mr. McCLENNEN:

Q. Is there any competition between the Central Pacific Railroad and the Atchison, Topeka & Santa Fe?

A. There is not. The Central Pacific Railroad stops at Ogden.

Q. Is there any competition on transcontinental business between the Central Pacific Railroad and the Western Pacific Railroad?

A. There is competition between the through line formed by the Central Pacific and its eastern connections and the through line formed by the Western Pacific and its eastern connections on transcontinental business, but there is no competition as to the Central Pacific itself on transcontinental business.

Q. Is there any competition between the Central Pacific Railroad and its eastern connections and the Atchison, Topeka & Santa Fe on transcontinental business?

A. The Central Pacific and its eastern connections and the Atchison, Topeka & Santa Fe Railroad, yes. The competition is active.

Q. If the Central Pacific Railroad and its eastern connections were not under the same control as the Sunset Route, would there be competition, as a practical matter, between the Central Pacific Railroad and its eastern connections and the Sunset Route on transcontinental business?

A. The competition would be the same.

Q. The two lines—that is, the Central Pacific Railroad and its eastern connections and the Sunset Route—are physically and in a business way in a position to compete strongly for transcontinental business, one against the other, are they not?

A. The Central Pacific with the Southern Pacific?

Q. The Central Pacific with its eastern connections.

A. As at present constituted, they are.

Q. The effect of having the two lines in one control is to reduce the sharpness of that competition?

225 A. It is not; the effect is to increase the public service and improve it.

Q. Does the Central Pacific Railroad and its eastern connections compete to-day as strongly with the Sunset line as the Atchison, Topeka & Santa Fe does on transcontinental business?

A. On transcontinental business the line formed by the Central Pacific and its eastern connections is fully as effective as the Atchison, Topeka & Santa Fe.

Q. By "competition" in these answers that you have given you mean, do you not, that the different lines named are in a position to carry the same classes of business from and to the same territories; am I right?

A. By "competition" I mean that as competitors they are separate and distinct units contending for the same business, namely, trans-continental business.

Q. Is the Central Pacific Railroad contending actively for business which could move by the Sunset Route?

A. The Southern Pacific in soliciting business solicits for its longest haul, with respect to far eastern territory for the classes of business which it can handle by that route to better advantage, but as to the main business of the coast, the high-class business, its solicitation is for the Central Pacific and its eastern connections within designated areas.

Q. That class of merchandise which can not satisfactorily be carried by the Sunset line the Southern Pacific seeks to carry by the Central; is that correct?

A. We seek to carry by the Sunset our long-haul business, considering the Sunset Route as our longest haul; limited, however, by the topography of the country, that where the public service would be inferior by the Sunset Route we do not aim to take the business that way. In general, throughout the territory served by the Union Pacific and throughout the interior of the United States we solicit from all points tributary to the Central Pacific in conjunction with the Ogden line.

Q. That is, on all business which is of a nature so that it can be persuaded to the Sunset Route between California on the one hand and the Atlantic seaboard on the other you seek to get it for the Sunset Route?

A. Yes.

Q. You do not seek to get that class of business for the Central Pacific Railway?

A. Our long haul is our preferred haul, and our next preference is the Central Pacific.

Q. My question was very simple. I want to know if you will not answer it a little more directly, Mr. Sproule? I think the answer "No" would fully cover it. I am not sure.

Mr. BLAIR. The witness has a right, of course, to answer your question and to make any qualification afterwards to fully present all the facts.

Mr. McCLENNEN. There is not the slightest question of that; but I do not think he has fully answered it. I do not think there will be any difference between us as to what he may do after that.

(By request the reporter read the question as follows:)

“Q. You do not seek to get that class of business for the Central Pacific Railway?”

The WITNESS. We do seek it, but initially we seek it for the Sunset Route, and, if not readily obtainable by the Sunset Route we take it by the Central Pacific line. Independently of that, however, there is a great mass of business which we do not solicit for the Sunset Route at all, and which is solicited only for the Central Pacific line.

By Mr. McCLENNEN:

228 That is, what you can legitimately get for the Sunset Route you seek to get for that route and do not seek to get for the Central Pacific unless you are unable to control it for the Sunset, is that correct?

A. For the class of business that we solicit for the Sunset Route, yes.

Q. What are the commodities which you do not solicit for the Sunset Route? And in giving your answer please abstain from generalities and give the commodities by name.

Mr. BLAIR. Would it not serve to make matters clearer if you defined what you mean by the Sunset Route? You mean the route through Galveston to New York?

Mr. McCLENNEN. First, in answer to your suggestion, these questions are predicated on the supposition that we are speaking of freight between California points and Atlantic seaboard points, and by “Sunset Route” I am intending at this present time to include what passes through El Paso and New Orleans, or what would pass through El Paso and New Orleans or Galveston.

Mr. BLAIR. And by boat to New York?

Mr. McCLENNEN. And by boat to New York; or, if there be such a thing, by rail from New Orleans to New York.

(By request the reporter read the pending question, together with Mr. McClellan's explanation.)

229 The WITNESS. Deciduous, or what is commonly called fresh fruits or green fruits, from all of the northern and central California shippers, we solicit exclusively via Ogden.

All Asiatic business coming to us in ships from the Orient goes by way of Ogden, unless the destination makes it necessary to send it the other way.

And from all points in northern and central California, all business we endeavor to send by the Ogden line when it is destined to any point west of Buffalo or Pittsburgh. In fact, generally speaking, for the entire territory of the United States west of Pittsburgh and Buffalo and north of the Ohio River the Central Pacific is the pre-

ferred line and the Union Pacific the preferred connection in every respect.

By Mr. McCLENNEN:

Q. The question and the explanations were long, so that you are perhaps to be excused for it, but you observe that you have got away from the question as explained. I was speaking of the freight originating in California or to be delivered there to the Atlantic seaboard or originating on the Atlantic seaboard, and asking you to name the commodities between those two territories, that you did not solicit preferentially by the Sunset Route. You started by mentioning fruits from northern and central California, but you named no other commodity. Are there any others?

A. I do not think there are any others. I should have added vegetables and citrus fruits.

Q. That is, fresh vegetables?

A. Fresh vegetables and citrus fruits.

Q. Then, on all business between the Atlantic seaboard and California, excepting fruits in the northern and central part of California and fresh vegetables, the first effort of the Southern Pacific Company is to persuade the freight not to pass over the Central Pacific Railway through Ogden, but rather to pass through El Paso; is that correct?

A. To and from the Atlantic seaboard.

Q. That is true, is it?

A. Yes. You understand, of course, that our solicitation is but a small part of the total solicitation for all that business. All the railroads are soliciting and competing for it.

Q. The Atchison, Topeka & Santa Fe Railroad is competing for that business, is it not?

A. It is.

Q. The Western Pacific Railway Company is competing for that business?

A. It is.

Q. Is there any other road with lines in California competing for that business?

A. With lines in northern and central California, you mean? The San Pedro line also competes in southern California.

Q. Is there any other?

A. Those are the terminal lines.

Q. And the only ones?

A. Yes.

Q. Do any of the railroads not having lines in California solicit in California for eastbound freight to the Atlantic seaboard?

A. A multitude of them.

Q. Will you name those that you know that solicit in California?

A. In addition to the terminal lines, the Northern Pacific, the Great Northern, the Canadian Pacific, the Union Pacific, the 232 Denver & Rio Grande, the Missouri Pacific, the Iron Mountain, the Texas & Pacific, the Chicago & North Western, the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific the El Paso & Southwestern, the Burlington, the Chicago & Great Western, the Lake Shore, the New York Central System, the Pennsylvania System, the Baltimore & Ohio System, the Illinois Central the Frisco line, and there are some others.

Q. You can think of no others at present?

A. There are several others.

Q. I say, you can think of no other names at present? I want to exhaust your recollection.

A. The Wabash; the International Great Northern, I think; the Chicago & Alton, I think; there may be three or four more. Those are the important ones.

Q. The Northern Pacific solicits California business for carriage from Portland over its own lines?

A. It has divisions with us, and works with a steamer line also.

Q. That is, what it succeeds in getting goes either by steamer line from San Francisco or runs over your rails to Portland?

A. Yes.

233 Q. Is that competition serious, so far as California business is concerned with the Sunset Line?

A. It is one factor in the competition.

Q. To save putting it several times: The competition of the Northern Pacific, the Great Northern, and the Canadian Pacific is not very serious, so far as California business is concerned, is it?

A. The percentage of business they do, I think, is not heavy.

Q. And that is on account of the natural conditions, their being so far north; they are not in a position to carry it as readily as the other lines?

A. Mixed rail and water route.

Q. The Union Pacific solicitation, both east and west, is directed toward getting the freight over its lines to Ogden and then over the Central or Western Pacific to California, or from, as the case may be.

A. You refer, now, to strictly California business?

Q. Yes.

A. No. It is restricted, so far as it does not compete with the San Pedro line.

Q. With that exception, is my statement correct?

234 A. Generally speaking, I think so as to freight business.

Q. The solicitation of the Denver and Rio Grande is directed towards getting the business, so far as California is concerned, over the Western Pacific, is it not?

A. Yes; the Western Pacific is their preferred connection. They do work with the Central Pacific.

Q. They do work with the Central Pacific?

A. Yes.

Q. What has just been said about the Denver and Rio Grande applies equally to the Missouri Pacific and Iron Mountain?

A. Yes.

Q. That is, the Missouri Pacific and the Iron Mountain, the Denver and Rio Grande, and the Western Pacific are commonly known as the Gould lines?

A. Yes; excepting that the Iron Mountain has also a connection with the Texas & Pacific and works freely with it in conjunction with our El Paso route.

Q. The effort of the Texas & Pacific is to get a business into California over the Southern Pacific Sunset rails?

A. Via El Paso.

25 Q. The effort of the Chicago Northwestern is to carry the traffic east and west, receiving or delivering at Omaha?

A. Yes.

Q. Carrying it over the Union Pacific?

A. The Chicago & Northwestern, the Union Pacific, and the Central Pacific form the through line.

Q. And what is the preference of the Chicago, Milwaukee & St. Paul?

A. They also work with the Union Pacific and Central Pacific.

Q. The effort of the Rock Island, so far as California business is concerned, is to deliver it to the Sunset Route at El Paso?

A. At El Paso. They also make deliveries to the Union Pacific at their Colorado junction—Pueblo.

Q. Their long haul is to El Paso?

A. Their long haul is to El Paso.

Q. And their preference is to El Paso?

A. Yes, sir. They also work through Omaha, as you are aware. They join the Union Pacific at Omaha.

26 Q. The Rock Island line from Chicago through Omaha, and by connections to El Paso?

A. With the Union Pacific at Omaha. It also has a line from Chicago to El Paso in conjunction with the El Paso and Southwestern. It also has a line to Colorado.

Q. The Rock Island has three gateways with which it connects up in transcontinental business, and its preference, in their order, is El Paso or the Colorado points or Omaha?

A. Yes.

Q. The preference of the Chicago, Burlington & Quincy is what?

A. They work both with the Rio Grande and the Union Pacific, and their business reaches us at Ogden from the Union Pacific and also reaches the Western Pacific at Salt Lake.

Q. The effect of the Chicago Great Western is to get the business through Omaha or Kansas City?

A. Yes.

Q. And that means ultimately over the Central Pacific or the Western Pacific?

A. They work directly, I think, with the Union Pacific.

237 Q. I suppose, so far as southern California is concerned, it might mean the San Pedro?

A. Yes. However, they work, as do all of these roads, with anybody that will work with them, as a rule. Most of these roads work with the roads that work with them; that is, the Chicago Great Western would solicit business in conjunction with the line that was soliciting for it, you see.

238 Q. As a matter of fact, between these connecting lines where there are choices, that is somewhat a matter of trade between them, is it not?

A. It is a matter of interchange—

Q. (Interposing.) That is, A says to B—

A. (Interposing.) "If you will give me this business, I will give you this business"; not as a rule as to any general specific business but in the general trend of solicitation, because business is so actively solicited and the competition so keen.

Q. Now, the Lake Shore & Michigan Southern, the New York Central, the Pennsylvania, and the Baltimore & Ohio prefer to get the business to pass through Chicago; is that correct?

A. Some business through Chicago, and some of them prefer some business through St. Louis.

Q. And from that point on west to California it means the same lines that we have just been mentioning?

A. It depends on their western connections—whoever they happen to be.

Q. The Illinois Central is a Mississippi Valley line, is it not?

239 A. It has two lines; it runs from Chicago to Omaha, and from Chicago to New Orleans.

Q. Its longest haul is to New Orleans?

A. Yes.

Q. And it is working more or less preferentially for the Sun Route, is it not?

A. It works for its longest haul.

Q. Which means the Sunset Route?

A. The Sunset Route would be its natural connection.

Q. If California business gets to New Orleans, the only practicable method is the Southern Pacific from there to California, is it not?

A. Well, we think it is the best line.

Q. And it carries practically all?

A. It is the line that has the best-known shippers.

Q. And it carries practically all of the through business from New Orleans to California?

A. Well, the Texas & Pacific has its own line.

Q. The amount it carries is inconsiderable in comparison with the Sunset carries, is it not?

A. The Sunset line carries the greater part of the business, I think.

Q. The effort of the Frisco Line is to get the California business through Fort Worth and thence over the Southern Pacific?

A. They work very largely with the Santa Fe, too.

Q. Where do they deliver to the Santa Fe or receive from?

A. I do not know what their junction point is at present.

Q. Which gives the Frisco line the longer haul—Fort Worth or the other?

A. I think the divisions are about the same.

Q. The Wabash works preferentially with the Missouri Pacific, is it not—the Gould lines?

A. I think not. I do not know as to that, but I think they work with all lines.

Q. The International & Great Northern runs where?

A. It is a Texas line that runs—well, I would have to look at the map to determine where its lines are—it is a local line that runs through Texas, from northern Texas down to the Gulf and from northern Texas down to a connection with the Texas & Pacific.

Q. Its preference on California business is the Southern?

A. I think it is the Texas & Pacific, is it not? I do not know what its preference is, except that its business reaches us by El Paso.

Q. You say you think its preference is the Texas & Pacific, which brings it to you at El Paso. The Chicago & Alton is another Mississippi Valley line?

A. Yes.

Q. And they seek to carry to Kansas City?

A. Kansas City. You understand that when we talk of the preference of most of these lines that that is simply a general belief, based upon observation, but to determine what the existing preference of

any line really is, anybody outside of their own council would have to analyze.

Q. These preferences do rise to a point of agreement in some instances?

A. In some instances, but generally not; the lines generally consult their own interests.

Q. The business that is influenced by these other lines to pass through Ogden you carry as tendered over the Central Pacific?

A. Yes.

242 Q. To and from California?

A. Yes.

Q. Now, am I right in assuming that these same lines maintain solicitors in Atlantic seaboard territory in an effort to secure the west-bound freight to California?

A. That is generally true.

Q. Has the business of the Western Pacific become large as compared with that of the Central and Southern and the Atchison?

A. It has not.

Q. Up to the present time it is not very much of a factor in the competition, is it?

A. It is an important factor in the competition, but it does not succeed in getting a large share of the business. Its competition, however, is just as active as if they were getting a large quantity.

Q. The strongest competitor of the Sunset Route is the Atchison, Topeka & Santa Fe for California business; is that correct?

A. I should say the strongest competitor is the Central Pacific, Union Pacific line.

(Whereupon a recess was taken until two o'clock p. m.)

The WITNESS. I desire to add to my answer as to commodities which, by reason of their character or packing, we do not solicit for the Sunset Route, the following:

List of commodities not competitive with Sunset-Gulf route.

Perishable freight:

Deciduous fruit, citrus fruit, vegetables, oysters, fresh meat.  
Coal and coke in bulk.

Live stock.

Grain in bulk.

Emigrant movables.

Hides and pelts, green.

Liquids, in tank cars. (Wine, asphalt, and oil.)

in bulk.  
ash, doors, and blinds.  
ocomotives.  
ssenger and freight cars.

High explosives.

Earthenware, stoneware, and crockery, in bulk.  
Organs and pianos, harnessed in cars.

in cans.

elicate machinery.

oves.

utomobiles and other vehicles.

WILLIAM SPROULE, the witness under examination at the taking of recess, resumed the stand for further direct examination.

By Mr. McCLENNEN:

Q. In view of this list which you have just given I will digress from the examination I was making to ask you with reference to the things on this list. As to deciduous fruit, what is the reason for not putting them over the Sunset Route?

A. Deciduous fruit means the fruits of trees whose leaves fall annually, and they are perishable and want market directly.

Q. That is, it is important to get expedition in transportation?

A. Yes.

Q. And the same is true of citrus fruits?

A. The same is true of citrus fruits.

Q. And vegetables?

A. And vegetables. All those three are diverted freely in transit. The shippers desire to so ship as to easily divert them.

Q. The shipments of citrus fruits from California are very heavy?

A. Yes.

Q. They do go to some extent by the Sunset line?

A. Slightly, only for that territory or contiguous.

Q. That is, only for the southern portion of the State?

A. Yes; and adjacent territory.

Q. Could you place any rough division line in California as to the fruit traffic, saying "north of this it all goes via Ogden and south otherwise"?

A. No; because it is not packed that way. A given territory wants pears, for instance, and another territory at a given time wants apples. It depends on where market can be had. There is no arbit-

trary line of division of any kind; it is simply a question of how the shipper desires it sent.

Q. The citrus fruit, practically none of it goes by the Morgan boats from New Orleans to New York?

A. Generally speaking, none of it.

Q. Even that which passes through El Paso goes all-rail?

247 A. Yes.

Q. Over other lines beyond?

A. Yes. It is wholly determined by the shipper, to suit his purposes.

Q. Take, for instance, Fresno as a point. Does a large part of the citrus fruit south of Fresno go to El Paso?

A. Yes; it does; because the climatic conditions make it favorable. Later in the season it goes out by Ogden because that is a cooler climate.

Q. Does much citrus fruit originating north of Fresno go through El Paso?

A. Citrus?

Q. Yes.

A. Hardly any.

Q. The deciduous fruit shipments from California are small in comparison with the citrus, are they not?

A. They are not small, but they are very much less than the citrus.

Q. The deciduous fruits of the southern part of the State go out through El Paso, do they?

248 A. They go both ways.

Q. Is there much traffic in fresh vegetables?

A. Yes.

Q. What part of the State are they shipped from?

A. North, south, and central.

Q. All over the State?

A. Yes.

Q. Do you carry in your mind the approximate tonnage per year in fresh vegetables?

A. No; I do not recall.

Q. Oysters, where do oysters in California go?

A. The oysters are westbound.

Q. They are westbound oysters?

A. Yes.

Q. And fresh meat, is that shipped out or shipped in?

A. Shipped in. There is very little movement of fresh meat; it is only under very unusual conditions that fresh meat is shipped.

Q. Is there much traffic in oysters?

A. Yes; because California does not re-seed or propagate oysters out there, with minor exceptions.

Q. Coal and coke in bulk, what is the reason for not urging that through El Paso?

A. Do you refer now to the Atlantic seaboard?

Q. I am simply taking your list.

A. It is coal and coke in bulk, and we would not want to handle on our steamers. As a matter of fact, coal and coke that moved California moves in bulk.

Q. Moves in bulk and does not move from the seaboard, does it?

A. Some blacksmith's coal is moved from seaboard, and some, but as a rule it comes from points in Georgia or Alabama.

Q. And goes all rail?

A. Through New Orleans, that is, territory contiguous to New Orleans, you see.

Q. That coal and coke in bulk to California largely goes over the rails of the Southern in entering California, and not over the rails of the Central?

A. But if it originates in the north it goes over the Central. Take Chattanooga coal or coke for example. It would come over whatever could get it; so far as we are concerned, we try to get it over the Union Pacific.

Q. Live stock; is the movement chiefly in or out of California?

A. Blooded stock in and market stock out.

Q. And the reason for not urging that over the Sunset is the need rapid transportation?

A. Well, it would not be a desirable route for transshipment; land rail and water makes it undesirable. We could handle all those things, but we do not try to.

Q. You try to get it through El Paso, having it brought by rail to southern lines?

A. If it originated down in the Southern States we would probably bring it to El Paso, but if it originated anywhere that made it possible reasonably to the Omaha gateway it would move that way. You understand the shippers have the selection of their own route and they select the routes that are physically best for them.

Q. And in doing your soliciting, when the desires of shippers have come fixed in a certain way you do not necessarily attempt to persuade them further; you drop that branch of traffic and go to others?

A. We do not solicit against the shippers' interests.

Q. Grain in bulk?

A. That is generally eastbound. Barley, for example, to New York for brewing purposes.

Q. And what is the reason for not carrying that or not seeking that through El Paso?

A. The same reason; it is in bulk and transshipment would be awkward. We would have to ship it in bulk from ship to car and then when it got to New York we could not unload it in bulk on the wharf and we would have to find some means of disposing of it; as a commercial question, it is not feasible.

252 Q. Emigrant movables?

A. They are the ordinary outfit of an emigrant moving.

Q. They are very apt to follow the line the emigrant follows?

A. Yes; they follow the route of the emigrant and they are highly breakable and difficult freight to handle, and the emigrant naturally wants it, so far as possible, at the destination in the shape in which he shipped it.

Q. Hides and pelts, green?

A. Hides and pelts are generally ill-smelling and unpleasant stuff to handle, and we do not want to mix them in with other freight.

Q. Liquids, in tank cars. I take it you do not want to remove them from the tanks into the vessels?

A. In those cases where we refer to bulk or in tank cars, it means that the rates being the same those commodities will naturally seek the rail line rather than one in which they would have to find some other container for the transshipment.

Q. Ore, in bulk?

A. The same reason.

Q. Do you not carry some considerable amount of copper from 253 the Shasta Mountains via the Sunset to the Atlantic seaboard?

A. We have carried some what is known as copper bullion, copper mat; that is, the smelter product which goes to the eastern refineries to be separated into the original metals.

Q. That is a large traffic?

A. No.

Q. Can you give me any idea of the tonnage?

A. At present I think they are all closed down.

Q. But when they have been in operation, I mean.

A. At one time it amounted to a couple of hundred tons a month, I think; but the activities of the Government have stopped them. The fumes from the smelter destroying the adjacent foliage shut them up.

Q. Sash, doors, and blinds?

A. Lumber and its products generally. They are the products of our forests, and we do not attempt to take them by the Sunset.

Q. What is the objection to their going by the Sunset?

A. They are fragile and easily damaged.

Q. Locomotives naturally go all rail?

A. Yes; besides, they are unwieldy.

Q. Passenger and freight cars, the same?

A. Similar.

Q. Silk?

A. Silk and tea, and all Asiatic cargo, we have always sent over the Union Pacific.

Q. What is the reason, as to silk and tea? Why could not they over the long route?

A. They are of very high value.

Q. High explosives?

A. For safety reasons.

Q. Earthenware, stoneware, and crockery, in bulk?

A. They are fragile.

Q. Organs and pianos harnessed in cars?

A. They could not harness them on board ship. "Harnessing" term that applies to their fastening in the cars with leather straps and harness.

Q. Tin cans?

A. Tin cans are very bulky. They are shipped in bulk in the cars, if we handled them we would have to crate them.

Q. Delicate machinery, stoves, automobiles, and other vehicles?

A. The same general reason. We do not consider any of those competitive.

Q. Am I right in understanding you, then, that as to these classes of commodities mentioned in the list that you have just you simply let them take their natural course without attempting to urge the traffic one way or the other?

A. No; we go further than that. We do not want them.

Q. You do not want them?

A. No.

Q. Going on with what we were talking about before, you have us, as best your memory would permit, the different domestic foreign lines that maintain solicitors or otherwise solicit in California?

A. I should have added the Erie and the Grand Trunk to the list I gave.

Q. The Erie and the Grand Trunk?

A. And the Lackawanna and the Lehigh Valley.

Q. Those four all seek to get the traffic through Chicago?

A. Mainly so, except as to the Grand Trunk. I do not know what policies are.

Q. What other way does the Grand Trunk have to—

A. (Interposing.) Presumably it is through Chicago.

Q. Is the list which you have given of the roads which solicit in California inclusive of substantially all of the lines

which solicit in the seaboard territory for California freight, or are there additional lines soliciting?

A. They solicit in Atlantic seaboard territory freight for California and solicit in California freight for the Atlantic seaboard but in addition to those I have named which solicit freight from California to the Atlantic seaboard there are undoubtedly a very large additional number who solicit for westbound business in Atlantic seaboard territory.

Q. And they are the various lines which desire to get the business to go through Chicago or St. Louis?

A. Yes; every line in Atlantic seaboard territory desires to get a share of the California business.

Q. Incidentally we have had it defined, but I would like to make sure, and I will ask you: When you speak of Atlantic seaboard territory you mean all of the United States east of—

A. The Atlantic seaboard is east of Buffalo and Pittsburgh.

Q. And north—

A. Of the Norfolk & Western.

257 Q. Making it very nearly agree, but not quite, with the southern boundary line of Virginia?

A. Parkersburg is the point which is the boundary line.

Q. Leaving out of consideration these commodities which you say you do not desire over the Sunset line, as to other commodities the efforts of all of these roads which seek to route through Ogden are directed necessarily, incidentally, to increasing the business of the Western Pacific, the Central Pacific, or the San Pedro line?

A. Or the Santa Fe.

Q. Well, if it went through Ogden would it still travel out on the Santa Fe?

A. Oh, via Ogden? No.

Q. I am right in limiting it to those three, so far as Ogden is concerned, am I not?

A. The efforts of those roads are directed to securing the business for themselves primarily—the originating road—and it will naturally endeavor to route its business most favorably to its own interest; and by what gateway it will arrive in California is a matter upon which they, as a rule, give only secondary consideration.

258 Q. Their first consideration is for themselves. Their next consideration is for a route that is agreeable to the shipper on the one hand and by which they can give him service on the other hand.

Q. Their effort is for their long haul, speaking in general?

A. On their own line; yes.

Q. I did not make the particular question sufficiently clear to you—

A. I did not quite catch what you meant.

Q. I mean the limitation in the particular question. We have been over the list and I got you to say which of them would prefer Ogden and which of them would prefer El Paso or the Atchison.

A. Yes.

Q. Now I say: Among all those lines which prefer Ogden the success of the effort of those roads to get freight necessarily incidentally helps the business either of the Central Pacific Railway, the Western Pacific, or the San Pedro?

A. It is the business of whichever road happens to get it.

Q. Those are the only three that would get it if it went through Ogden, are they not?

299 A. The San Pedro Line does not go through Ogden; it goes through Salt Lake. If it goes through Ogden, the only line that would get it would be the Central Pacific.

Q. Then all these lines that are seeking to get the freight for their longest haul, in the case of the lines in which that results in its going through Ogden, their efforts necessarily increase the business of the Central Pacific Railway?

A. As a part of the through line.

Q. And the effort of the solicitors of the Southern Pacific under the direction of its management is to counteract those efforts except in the commodities which I have mentioned, and have the freight go to your so-called 100 per cent line, through New Orleans?

A. No; quite the contrary. We aim to reciprocate with all those lines and interchange business with them and give them business to an extent that will justify them in working all they know how over our lines; that is, the through line via Ogden.

Q. Your solicitors in the Atlantic seaboard territory and in California visit the same merchants to a considerable extent, the same shippers, that are visited by the solicitors of all these other lines, do they not?

300 A. Yes; there is a very active solicitation by all roads and by all lines.

Q. And the effort of those solicitors with those shippers, except for the excepted commodities, is to have the shipments via the Sunset Route?

A. That is our preferred line.

Q. And if that solicitation is successful, it results in offsetting or defeating the efforts of the solicitors of these various other lines by so much?

A. Yes; naturally. If the Sunset Route gets it, the Santa Fe does not get it. If the Sunset Route gets it out of Los Angeles, the San

Pedro does not get it. If the Central Pacific gets it, the Western Pacific does not get it. It naturally follows that what one line gets, the other line does not get.

Q. Precisely. In these various questions as to effort and the movement of freight, I take it you have been speaking, in the main, at the present time, have you not?

A. Yes; you are asking your questions as of the present time.

Q. The management of the Union Pacific Railroad and the 261 management of the Southern Pacific Railroad was in the same hands from 1901 until the early part of 1913, was it not?

A. Yes, sir.

Q. Before 1901 that was not the case?

A. It was not.

Q. During the period from 1901 to 1913 it was still the desire of that management to use the Sunset Route as the preferred route for the business between California and the Atlantic seaboard?

A. It was.

Q. Will you define Central Freight Association territory?

A. That is between Buffalo and Pittsburgh on the one hand and Chicago and St. Louis on the other, and north of the Ohio River.

Q. During the time that the Southern and Union were under the same control, the effort as to freight between Central Freight Association territory and California was to have it go over the Union and the Central?

A. Yes.

Q. The effort as to the country in the Mississippi Valley below the Ohio River, to California, was to have it go over the Sunset Route?

262 A. The El Paso.

Q. You mean to distinguish that from New Orleans, do you?

A. That includes New Orleans, but not exclusively New Orleans.

Q. That is, either to have it go through New Orleans—

A. (Interposing.) Through New Orleans or through Houston, through any of the various junctions, as might be advisable.

Q. The obvious reason for this effort with reference to the Central Freight Association territory and California was that this so speak common management, if it went over the Central route, to the haul all the way from Omaha to California?

A. Yes.

Q. Or from Kansas City to California?

A. Yes.

263 Q. And that was more profitable than to have that freight travel over independent lines down to New Orleans, where the Sunset Route would get on the whole a smaller percentage of the haul than they would if it went to Omaha; is that correct?

A. That was one of the considerations, I think.

Q. During the period from 1901 to 1910 the most of the soliciting officers of the Union Pacific and the Southern Pacific were consolidated into the hands of one man in each place?

A. Joint officers.

Q. There were exceptions to that, I think?

A. Yes.

Q. Do you happen to remember which those were?

A. The New York office, which the Union Pacific maintained separately, and the Southern Pacific maintained its office, and at Boston.

Q. Otherwise the officers were all consolidated?

A. And I think at Philadelphia.

Q. At Philadelphia the offices were maintained separately?

A. Yes; they were maintained separately.

Q. Do those three exceptions cover all?

A. Yes.

Q. Prior to 1901 the offices of the Union and of the Southern, the soliciting offices, had all been separate offices?

A. That is correct.

Q. And the solicitors of those respective roads were directly competing with each other to get the business?

A. Sometimes competing and very often cooperating.

Q. Before that merger—I will call it for short—of 1901, the attitude of the Southern Pacific management toward the freight traveling between Central Freight Association territory and San Francisco had been somewhat different from what it became after the merger, had it not?

A. Very slightly.

Q. Prior to 1901 the traffic from Pittsburgh to California was all sought via New Orleans by Southern Pacific solicitors, was it not?

A. Some kinds of freight.

Q. And the same is true of Cincinnati?

A. Yes.

Q. And true to some extent of Cleveland, Ohio?

Q. A. I am not sure of that, but Cleveland would be only to a slight extent, if at all.

Q. The same was true to some extent of Detroit?

A. I think not.

Q. Didn't automobiles travel from Detroit via New Orleans prior to that?

A. They may have done so, but if so it would be only to a very limited extent.

Q. Do you remember whether the Milwaukee beer was sought by the Sunset Route?

A. I don't remember.

Q. You don't remember one way or the other?

A. I don't remember one way or the other; I would be very much surprised if they got it. Do you continue to refer to California business?

Q. I continue to refer to California business. Freight was sought prior to 1901 by the Southern Pacific via New Orleans and via El Paso from Chicago and St. Louis?

A. From St. Louis, yes; from Chicago, some. The seeking of business in those days, I should explain, did not depend upon Southern Pacific solicitation; it depended on conditions that prevailed in those territories at that time, conditions that have since 266 vanished by force of law. I mean that the controlling forces in those days were the local lines in those territories, and business took routes in those days that under the conditions of the present it would not take at all, and those conditions were not of the Southern Pacific's making.

Q. Those various lines running, roughly speaking, north and south through the Mississippi Valley territory, were all seeking to have the California business go through New Orleans preferentially?

A. It was no uncommon thing in those days for business to seek the most circuitous possible route in order to get the largest aggregate amount of advantage out of the transportation?

Q. You mean for the initial lines?

A. Yes; and the intermediate lines, the various lines over which the business moved.

Q. Speaking in general the effort of the initial railroad is apt to be more effective than the effort of the intermediate or delivering railroad in influencing the routing of business?

A. It depends on who has the most to offer, everything else being equal; the initial line has the advantage if it—

267 Q. For instance, if the New York Central Railroad wanted the business to go through Omaha, even if they did not have solicitors in the field their very presence on the ground where they were giving the information to shippers through their ordinary local agents would tend to make a much larger amount of business go through Omaha than if that same railroad wanted the business to go through New Orleans; is that true?

A. If the shipper had no interest except at the originating point that would be true.

Q. What is the meaning of "common points"; for instance, "Pittsburgh common points" means what?

A. That is that the Pittsburgh rate applies to points adjacent; it would take the common rate, the same rate, subject to the same conditions.

Q. Then, speaking in general, what you have said in one way or the other about Pittsburgh, Cincinnati, Cleveland, Detroit, Chicago, and St. Louis would apply to the adjacent territory?

A. It means the point and the other shipping points adjacent to that take the same rate, subject to the same conditions.

Q. And the attitude of the Southern Pacific Company, as you have described it, toward the freight in those various cities I have mentioned, would apply equally to the adjacent territories of those cities?

A. I do not know to what that question is directed. You are talking about the period prior to 1901?

Q. Yes.

A. Prior to 1901 the term "common points" had the same general signification that it has now.

Q. And the attitude of the Southern Pacific, for instance, towards Pittsburgh freight would be the same as the attitude of the Southern Pacific towards the Pittsburgh common points, for instance, whatever that attitude might be?

A. Well, I am not willing to say that the attitude of the Southern Pacific with respect to business to-day, under the conditions that prevail to-day, would always be the same as in 1901 with respect to specific business under conditions that prevailed at that time.

Q. I am still keeping back of 1901.

Q. A. But I can say this, that the policy of the Southern Pacific with respect to the conduct of its business is the same since the unmerging, since 1913, the period to which you refer, as it was prior to the time we became dominated by the Union Pacific, 1901.

Q. Now, in addition to the efforts of the local lines in the Mississippi Valley running north and south to get the business through New Orleans, the Southern Pacific solicitors were also endeavoring that region to get it in that way, were they not?

A. In 1901?

Q. Yes, and prior thereto.

A. There was a great deal of that business that we were not endeavoring to solicit at all.

Q. But there was a great deal of it that you were?

A. There was a great deal of it that we solicited.

Q. Do you want to leave the comparison in that way, as "a great deal and some"? Was there not really more that they were endeavoring to solicit that way than the reverse?

A. No; the great volume of the interior business was being solicited by the routing through Omaha.

270 Q. That was the volume of the interior business of the kind that could be best handled through Omaha?

A. Business generally, interior business.

Q. But as to those classes of freight which could stand the long haul without difficulty, the effort of the Southern Pacific solicitors in Central Freight Association territory prior to 1901 was to get that business through New Orleans, was it not?

A. The bulk of it, no; some of it, yes. With reference to conditions that favored the shipper, wherever the conditions favored the shipper, whoever influenced the tonnage, the solicitor was very likely to work for that business because that was the line of least resistance; but as a general proposition the major portion of the business west of Buffalo and Pittsburgh, inclusive, went by Omaha, the great volume of it; a very small fraction of the tonnage went by way of New Orleans.

Q. I am not speaking now about the actual movement of the traffic, but about the effort so far as the shippers' interests would not suffer, so far as the commodity was of a kind that would stand the long haul without difficulty, was not the effort of the Southern Pacific solicitors prior to 1901 to get the freight from the

271 Central Freight Association territory through New Orleans?

A. With those qualifications, I think it was. But, as exemplifying what I said a while ago about the conditions at that time being responsible for that, it was to the shipper's interest in large measure to send his freight by New Orleans or it would not have so gone. For example, at this time and since the unmerging, our solicitors do not solicit Central Freight Association territory through New Orleans through the Sunset route, but solicit it in connection with the Union Pacific. It was the conditions that were peculiar at that time, and which no carrier controlled.

Q. And that condition was a condition of years' standing, was it not?

A. Years' development. Incidentally, that was the reason why the Hepburn Act was passed.

Q. I have been talking to you about California freight. I would now like to direct your attention to Oregon freight. Is the effort of the Southern Pacific Company with reference to such Oregon freight as is going to travel to the eastern part of the country, and which can be got to pass through California, an effort to have that freight go

272 via the Sunset route, excepting those commodities of which you have given me a list?

A. In the case of Oregon the force and stress of the competition is via Portland, and as against the short haul through Portland

to solicit the business by any route by which we will be successful in holding it.

Q. That is, as to that Oregon business, your possibilities are either a short haul out of Portland or else to haul it through California?

A. Yes. Salem, the capital of Oregon, for instance, is only a few hours from Portland and from the Great Northern and Northern Pacific and O. W. R. & N. Any of them may get it, but other forces are all in the field soliciting it; the commercial force of Portland is behind that solicitation, and we have simply to solicit that business by any route by which we can capture it.

Q. But the efforts of your solicitors and your instructions to them are to get it toward California rather than toward Portland?

A. To get it to the route that will give us the most money.

Q. That means toward California?

273 A. Well, yes. As an illustration, prior to the merger we had the route opened through Ogden in connection with the Union Pacific. When the merger came the Ogden route was closed so as to force that business through Portland to the Union Pacific lines through that gateway.

Q. You refer to the Roseville gateway?

A. Yes; the Roseville gateway. Since the unmerging we have reopened the Roseville gateway with the Union Pacific, and now deliver that business to them at Ogden.

Q. You had a division line with respect to that, did you not? That is, business north of a certain point and south of a certain point, or did you close the Roseville gateway entirely?

A. The Roseville gateway was entirely closed on Oregon business.

Q. And the effect of that was that business which was going through Ogden from Oregon had to go over the Oregon Short Line?

A. Or else came down over to the Southern Pacific and out through the El Paso gateway.

Q. You did not get the limit to my question. All the freight that was going through Ogden after that gateway was closed had to go over the Oregon Short Line?

274 A. It had to go over the Oregon Short Line, reaching the Union Pacific at Granger.

Q. The Roseville gateway had been an open gateway for years before 1901?

A. Yes.

Q. How soon after 1901 was the Roseville gateway closed?

A. Very shortly after that.

Q. Prior to the closing of that gateway the Oregon business could come down to Roseville, which is near Sacramento, and then go over the Central Pacific to Ogden?

A. Yes.

Q. The closing of that gateway at Roseville had the direct effect of preferring the Oregon Short Line to the prejudice of the Central Pacific?

A. Yes.

Q. The closing of the Roseville gateway did not affect at all the passage of Oregon business via El Paso?

A. No.

Q. That was still open?

A. It was.

Q. And the effort of the Southern Pacific was to get the 275 Oregon business, so far as it was possible to go through El Paso?

A. Naturally.

Q. That effort continued, even during the period of the merger?

A. It did.

Q. And, of course, continues to-day?

A. Yes. Well, when you say that effort continues to-day in that last question I suppose you are still referring to Atlantic seaboard business?

Q. I am referring to Atlantic seaboard business; yes. At the time the Roseville gateway was closed by the Southern Pacific the Ogden gateway to the Central Pacific from the Union Pacific was also closed as to Oregon business, was it not?

276 Mr. BLAIR. May we have that question repeated?

(The question was repeated by the reporter.)

The WITNESS. I don't understand that question now. May I have it again?

(The question was again repeated.)

The WITNESS. That is as to Oregon business?

By Mr. McCLENNEN:

Q. As to Oregon business; yes.

A. The Oregon gateway was not closed by the Central Pacific.

Mr. HERRIN. By the Southern Pacific?

The WITNESS. It was closed by the Southern Pacific under the merger conditions.

By Mr. McCLENNEN:

Q. It was closed by the Southern Pacific?

A. Yes; because the Union Pacific did not want to get the business that way; they wanted to get the business through Portland, and it was for that purpose that the change was made. The Southern Pacific, you know, reopened that gateway as soon as the merger period ceased.

Q. The quantity of freight moving through El Paso east and west between Oregon and Atlantic seaboard is a large quantity, is it not?

A. Not very large; no.

Q. Have you any idea what it would amount to in tons?

A. No. The figures are accessible; they are documental.

Q. Now, what are the conspicuous commodities that are carried in El Paso from Oregon?

A. Chiefly hops, dried fruit, and lumber.

Q. Is the great bulk of the freight in those three commodities?

A. Yes. It is not great in bulk, but that is the bulk of the business.

Q. I mean that a very large proportion of whatever freight there is of the three kinds you have mentioned?

A. Yes.

Q. There is some freight that travels via the Sunset Route to Oregon, is there not?

A. Yes.

Q. If there were no question of the desires of the railroad, or a difference of organization, as a physical matter the natural course of freight passing south through Weed, for instance, and destined to the eastern part of the country, would be over the Central Pacific through Ogden, would it not?

A. By "the eastern part of the country" you mean a line directly east of Omaha?

Q. The whole of the country east of Omaha; yes.

A. The northern portion would pass over the Central Pacific line, and the States to the south would be more likely to go to the southern line through El Paso.

Q. You mean south of Sacramento?

A. No; I am taking business from Weed, for example, going to the east. If it were destined to points, we will say, in Iowa, Illinois, Indiana, and Ohio, it would be likely to go by way of the Central Pacific-Union Pacific line, but if it were destined to Oklahoma or any of the territory to the south it would be more likely to go by the Pacific line. That would be the line of least resistance, as a matter of railroad operation.

Q. And the same would be true if it were destined for the Atlantic seaboard territory that you have described—the natural course would be through Ogden?

A. The Atlantic seaboard, not to that extent, no; because in sending it around by the Sunset line they have found that that route is a satisfactory route to them—the shippers.

Q. The mileage from Roseville to New Orleans, if overlaid on the Central Pacific-Union Pacific and eastern connections, would come pretty near to reaching the Atlantic seaboard, would it not?

A. To New Orleans; no.

Q. Roseville, then, to New Orleans, would be about 2,500 miles?

A. To the Atlantic seaboard it would be nearer 3,500 miles.

Q. Roseville to the Atlantic seaboard?

A. Yes.

Q. It would be nearer 3,000, would it not?

A. Eight hundred plus a thousand is eighteen hundred, and five hundred more is twenty-three, and a thousand more is thirty-three hundred—between thirty-two hundred and thirty-three hundred, Roseville Junction to New York.

Q. Is not that from San Francisco to New York?

A. There is only 108 miles difference. Giving it in round figures, it is 700 miles from Roseville Junction to Ogden, 1,000 miles from Ogden to Omaha; that is 1,700 miles; and 500 miles—say 490 miles by the short line—from Omaha to Chicago, and the shortest distance from Chicago to New York that I recall is 973 miles. It is over a thousand miles by the New York Central.

Q. Is not the shortest distance 912 miles?

Mr. SPENCE. 916 miles.

The WITNESS. 916 miles. Then I have erred by 60 miles.

By Mr. McCLENNEN:

Q. This is a convenient time, so let me ask you in regard to the distances and see if they are correct.

A. Do you expect me to be a walking distance table? Here is a table that tells some of them, and I will give you any distances you want, but I would like to have a chance to look them up.

Q. Omaha to Ogden is 1,000 miles?

A. Yes.

Q. Ogden to San Francisco is 782 miles?

A. Yes.

Q. Chicago to Omaha 492 miles?

A. Yes.

Q. New York to Chicago 916 miles?

A. Yes.

281 Q. Mr. BLAIR. Will you designate that as being by the shortest route?

By Mr. McCLENNEN:

Q. These distances that I am giving you are all by the shortest rail route except as otherwise indicated.

A. They are correct for our present purposes.

Q. Pittsburgh to New York 444 miles?

A. Yes.  
Q. New York to New Orleans by water, 1,741 miles; New York to New Orleans by shortest rail, 1,372 miles; New Orleans to Houston, 362 miles; Galveston to Houston, 58 miles; New Orleans to El Paso, 1,192 miles; New Orleans to San Francisco, 2,482 miles; Chicago to New Orleans, 912 miles; Buffalo to New York, 442 miles; Cincinnati to New Orleans, 829 miles; Portland to New York, shortest rail, 3,204 miles; Portland to New York, via New Orleans and water from New Orleans, 4,487 miles; San Francisco to New York, 3,191 miles; San Francisco to Kansas City, 1,986 miles.

Perhaps it is asking too much for you to verify those, but will you except them as being correct, except as attention is called to some error?

A. Subject to correction, yes. They do not always agree with the mileage given on this table which I have before me. I suppose there are some minor changes perhaps.

Q. Why, then, would not the natural course of freight coming from Oregon through Weed and destined even as far east as the seaboard territory, if uninfluenced in any way, naturally pass through Roseville and Ogden rather than travel away down to New Orleans, where it had to be carried after it got there by water some 1,700 miles more?

A. It would be a question of the shipper's interests, but chiefly of the service. The chief item in the shipper's interest would be the service that he would get. If he finds that by sending it that way he gets better service, one more satisfactory to him, that is the way he will ship it. You understand that we have nothing to offer the shipper except his interest in his own shipments—no concession of any kind whatever that we can offer him—and the controlling factor in the routing of all business is not the wishes of the initial carrier or of any other carrier, but it is the shipper's interest in his own business. That is a point which it is advisable we should not lose sight of in the technical question of the carriers controlling the routing. The carrier has no control over the routing except the service.

Q. What I mean is this: If you could say to the shipper north of Weed, "We can offer you just as good accommodations, just as free cars, just as prompt attention to your demands, just as quick clearing of your freight and settlement of your claims on goods that you ship over our road through Ogden as we can through El Paso", then the natural course of freight coming down from the north through Weed would be to go through Ogden rather than through El Paso, would it not?

A. You are stating the condition as it exists—that he does get same facilities in every respect so far as the initial carrier is concerned, the Southern Pacific, whether he sends it out via Ogden via El Paso. There is not one whit of difference. When the statement from Weed comes down to Roseville Junction it comes down in the same train whether it is to go out via Ogden or via El Paso. When it goes into the train via Ogden it goes into a train that is a train the service for which is put on in conjunction with the Union Pacific and in cooperation with it and coordinated with it. It takes the train via El Paso, that is a separate service, and comes around via El Paso and Galveston, or whatever route the shipper selects; but there is no discrimination against him or for him with respect to any route that he elects.

284 Q. What are the sort of things that your solicitors can and do to shippers to induce them to the Sunset Route, rather than the route through Ogden?

A. In times of congestion, for example, or in times of economic trouble the part of the railroads, as the case may be, he finds that when freight gets to Omaha or at any of the many junctions beyond Omaha or terminal yards, it is held up, he loses track of it, he does not get it for weeks; and if it comes around by way of Galveston or New York he knows where it is, he knows where to find it, and he has no difficulty of that kind. It is only his experience of those conditions that prompts him to consult his own interest in giving his business to the line that, while longer in mileage, is shorter in service.

Q. Is there any other persuasion that you can hold out to the Oregon shipper to use the Sunset line rather than the Central Pacific line?

A. We have neither concession nor club that we can hold over him.

285 Q. I mean is that one thing, of continuous service by one company, the only advantage that you have to offer him to induce him to take this circuitous route rather than the shorter and more natural route?

A. I can not answer a question that says "shorter and more natural," because that is a statement to which I do not give assent. The natural route for any shipper is the route that will get him his shipments to his destination with the least friction to him and the most profit to him, which means the shortest time and the best facilities.

Q. Then I will not characterize it at all. Other than continuous control by one company, have you any inducement to persuade the Oregon shipper to use the Sunset Route rather than the Ogden route?

A. It is not the continuous control that does it.

Q. What is it?

A. It is the congestion and the difficulty of getting through the terminals in these various Eastern States and cities. They get into a network of lines throughout the East here, and the further the business gets away from home the more does it lose its identity in the great mass of business in this eastern country. That is the condition that puts him on his guard.

Q. What is the commodity which you ship from California that most requires expedition in delivery?

A. Fresh fruit.

Q. By what line do you send that, chiefly?

A. That is sent, the great preponderance of it, over the Central Pacific-Union Pacific line, in conjunction with the North Western or St. Paul, and almost uniformly the Erie Railroad to New York. In fact, the Erie has made a specialty of that green fruit business, because of the difficulties that I have described, including the fruit terminals on their own wharf in New York. They make a specialty of the green fruit movement.

Q. And that course of transit you select and urge because it is the most expeditious?

A. Yes. It has been specially organized to take care of that business, which has been built up in that way from a few hundred cars to many thousands annually.

Q. Has any effort been made by the Southern Pacific Company to specially organize for the carriage of other commodities through Ogden as expeditiously as they are carried through El Paso to the Atlantic seaboard?

A. Yes; we endeavor to handle oranges the same way. We have a special arrangement for handling all Asiatic cargoes.

Q. Do the Asiatic cargoes go through promptly?

A. Yes. The business has been specially organized for that purpose. You can realize that raw silk worth \$50,000 a carload must be given expedition.

Q. Are there any other classes of merchandise as to which the Southern Pacific has made special efforts to provide expedition on carriage over the Central and through Ogden?

A. The Southern Pacific and Union Pacific have a cooperative manifest freight system which covers all the freight moving, which has been in effect for years and is in effect to-day—was in effect before the merger.

Q. Has any effort been made to organize to insure prompt deliveries at and east of Omaha by the connecting lines?

A. So far as practicable, by appealing to their own self interest. You know when it gets to Omaha it divides up among all the connections east. While it is practicable to make a train load to Omaha, that train load will fly into splinters when it gets to Omaha, and as

it gets farther forward it is still further disintegrated until finally by the time it gets a few hundred miles beyond, there may be nothing left of the original train.

Q. What is the ordinary time which freight takes from San Francisco or Roseville via El Paso and Galveston or New Orleans to New York?

A. Mr. Spence, can you state that?

Mr. McCLENNEN. Please.

Mr. BLAIR. Let the witness testify, and you can ask the other witnesses what they know when they get on the stand.

Mr. ORR. But the witness called for help.

Mr. BLAIR. Let the witness state what he knows, and you can ask whatever you want of the other witnesses as they appear.

289 The WITNESS. Mr. Spence would be my authority on that. About eighteen days, I should say.

By Mr. McCLENNEN:

Q. What is the average time on freight from San Francisco or Roseville to New York via Ogden and Omaha?

A. That is a very hard question to answer. It approximates the same thing.

Q. Is there any inducement other than greater expedition that you can hold out to the Oregon shipper to New York to persuade him to ship by the Sunset Route through El Paso rather than by the Central Pacific through Ogden?

A. Nothing beyond the shipper's own interests and wishes.

Q. Other than expedition is there any other interest of the shipper that now occurs to you that you can point out to him as a persuasion?

A. Service and attention sum up the considerations of the shipper.

Q. You can give the same amount of attention at the initial point whichever way he ships, can you not?

A. Yes.

290 Q. You can furnish him the cars as quickly and conveniently whichever way he ships?

A. Whichever way he ships, so long as his shipment is on our railroads. We give the same attention and consideration by whichever route he ships, and the same bill of lading and the same contract and the same liability.

Q. What element of service, other than promptness, do you have to point out to him that you can not give via Ogden that you can give via El Paso?

A. Nothing except what I have already stated.

Q. There is a considerable amount of freight that is not moved hastily, as to the routing of which the shipper is not particularly ~~ca~~ ~~gardful~~, is there not?

A. I think such freight as that is negligible in quantity, because interest runs while the freight is in transit.

Q. Given about equal time, is there not a great amount of freight routing of which the shipper is not particularly regardful of?

A. He is regardful of it all; but there is some about which he is more insistent because of the character of it, either its value, or because of its seasonableness, or because it is of a perishable nature.

Q. The routing interests him almost entirely on account of probable speed and assurance of delivery?

A. With another consideration on the part of the shippers of certain commodities, and that is their ability to divert the freight transit to market or destination other than the one originally signated. They make those shipments sometimes responsive to market demands. At other times they make them because they sell right in transit.

Q. Shippers are actually considerably influenced by freight solicitors, are they not, to choose this, that, or the other route?

A. They are variously influenced by them.

Q. That is, solicitors do succeed in accomplishing work for the railroads employing them—many of them very large amounts of work—do they not?

A. I am afraid they would lose their jobs if they did not. That is, good man will accomplish more than a poor man on the same thing. You cannot exclude the human element from anything.

Q. What position does Mr. Spence hold with the Southern Pacific?

A. Director of traffic.

Q. Does he hold any position with the Central Pacific Railway Company?

A. The Central Pacific Railway Company is leased to the Southern Pacific.

Q. I did not mean to intimate anything by my question. He does not hold any position with that road, does he?

A. I do not know. I do not remember.

Q. And as director of traffic of the Southern Pacific Company he is the one in control of the course that traffic shall take, so far as the company is concerned?

A. Yes, sir.

Q. The solicitation by the company's solicitors is under him?

A. Let me make that plain as to myself: That while I am president of the company as a whole, I am in direct charge of the administration and operation of the Southern Pacific Company's lines west of Paso, Ogden, and Portland, and I am in direct charge of every-

thing within that territory. Mr. Spence, as director of traffic in New York, is the executive officer and has direction of the company's traffic generally.

293 Q. Let me understand you. Does that mean that although not having the title, you are virtually the director of traffic so far as that western end is concerned?

A. It means that our men handling traffic in the territory I have described work under my direction.

Q. To that extent are you coordinate with Mr. Spence?

A. Mr. Spence is my advisor in the matter.

Q. And in your respective territories you control the matter of traffic, whether it be over the Southern Pacific or over the Central Pacific?

A. Yes; whatever route it takes.

Q. Whatever route it takes of the so-called Southern Pacific system?

A. Yes. When we are soliciting business it is always to be remembered that we are soliciting against the field. We are soliciting against every route.

Q. Why is that?

A. Because any of these other roads can come in and get it. The Santa Fe is just as active in the field as we are, and so is the Western Pacific and so is the Union Pacific, and so are all of these roads that I have described. They have their soliciting staff on the streets, 294 their offices under the leading hotels in the city and in the principal towns, and they are scattered throughout this territory soliciting business day and night, literally; and we have to be alert as any of them to hold the business to the lines dominated by the Southern Pacific.

Q. The division of the Southern Pacific system into the Atlantic system and the Pacific system has existed at times, has it not?

A. It has existed at all times.

Q. Does it still exist?

A. It still exists.

Q. What is the Pacific system?

A. The Pacific system is the lines west of El Paso, Texas, Ogallala, Utah, and Portland, Oregon.

Q. And the Atlantic system?

A. The Atlantic system is the lines east of El Paso.

Q. The Central Pacific, then, falls entirely into the Pacific system?

A. The Central Pacific is wholly within the Pacific system.

Q. And the Sunset Route east of El Paso, including the boat line to New York, is in the Atlantic system?

295 A. Yes, sir.

Q. By the way, the boat line from Galveston and from New Orleans to New York is directly operated by the Southern Pacific Company, is it not?

A. Yes, but Morgan's Louisiana & Texas Steamship Company has its own manager in New York.

Mr. BLAIR. I think it should be noted that the steamship line is owned and operated by the Southern Pacific Company, and not by Morgan's Louisiana & Texas Steamship Company.

By Mr. McCLENNEN:

Q. That is what I understood. That is the fact?

A. Yes.

Q. The Sunset Route is in the field against all competitors, just as any other railroad is in the field against all competitors, is it not?

A. Yes.

Q. So far as business in California is concerned, apart from that directly contributory to the Atchison rails, the Southern Pacific Company is in a more influential position than any other carrier to acquire the business and affect the routing, is it not?

96 A. We have more lines in California and therefore ought to have a greater radius of activity, but the Santa Fe solicits business all over our lines in California, and so does the Western Pacific.

Q. Does much freight originating on the Southern Pacific lines go over the Santa Fe to points which could be served by the Sunset Route or the Central Pacific?

A. All that they can influence that way.

Q. No doubt; but is that a large quantity?

A. It is of some volume.

Q. Does it amount to much?

A. It is appreciable, I think.

Q. Appreciable?

A. Under the traffic arrangements they have the same opportunity to get business there that we have, so far as the shipper is concerned.

Q. The line that has the rails in the shipper's town or city, other things being equal, is in a very much better position to control the through routing of the traffic or to persuade the through routing of the traffic than any other road, is it not?

A. It should be.

97 Q. And is?

A. Other things being equal; yes.

Q. There has been practically no competition in rates on trans-continental business for years, has there?

A. The policy of the Government has prevented very aggressive competition in rates, because any road cutting a rate has to give thirty days' notice to its competitors.

Q. How long has that been required by the Government?

A. Since 1906, as I recollect it. We formerly had to give notice before we raised a rate. Now we have to give notice also before we reduce it. That, of course, has an obvious effect.

Q. Without disregarding the pleasantness of it, or the humor of it, do you really wish to put upon the Government, with all its other burdens, the responsibility for the uniformity of rates between the different transcontinental carriers that has existed for so long?

A. I have raised no issue with the Government.

Q. Then, coming back to the question again, and not considering for the moment who is responsible for it, the fact is, is it not, that rates on transcontinental business for years have been practically the same over all the different roads? That is true, is it not?

A. Yes; that is true.

Q. And the competition between them has been in solicitation, in service, in equipment, ease of getting cars, searching out and settling claims, promptness in delivery, and the personality of the individual representatives of the different roads, their courtesy in dealing with the public? That is true, is it not?

A. I think that is true.

Q. Is that a fairly comprehensive statement of the possible elements of competition other than rates?

A. It is a very pleasant generalization; but having heard it only once, I do not know just how comprehensive it is. It sounds comprehensive.

(By request the reporter repeated the pending question.)

The WITNESS. I do not detect what you have left out. It seems to be all right.

299 By Mr. McCLENNEN:

Q. You have spoken of the interest of the shipper as affecting the choice of route. It is true, is it not, that every railroad where it can furnish the shipper equally good accommodations over the route which gives it the longest haul seeks to have the freight routed that way for the purpose of giving the railroad the greatest revenue; is that correct?

A. Every railroad works for its long haul that gives it the most or greatest revenue when not inconsistent with the service to the public.

Q. I included that in my question. Have your instructions to your solicitors as to routes which they should work preferentially be oral or on paper, or both?

A. They are merely general instructions. I do not give them to the solicitors myself.

Q. What is that?

A. They are merely general instructions, and in line with the policy I just explained to-day.

Q. Are circulars issued to them from time to time?

A. I think not.

Q. Do you recall whether, after what I will call the "unmerging" in 1913 of the Union and Southern, circulars were 300 issued over your name to solicitors, instructing them to work the Sunset Route preferentially?

A. I should say not.

Q. Do you speak with positiveness about that?

A. I think so.

Q. The instruction is conveyed by word of mouth from time to time?

A. The instructions would not be given by me to solicitors; they would be given by the officer to whom they report.

Q. And he would be whom?

A. The general freight agent.

Q. Would your directions be given to the general freight agent?

A. My directions would be given generally to the vice president in charge of traffic, and he would deliver them to his freight traffic manager; and it is probably the freight traffic manager, by the way, who would issue those instructions.

Q. Do you know whether or not the freight traffic manager, or any other officer or employee of the company, has issued circulars 301 with reference to working the Sunset Route preferentially?

A. I do not know; but I do not think so. Those instructions would be flexible and to fit the commercial business to which they are adapted. Rigid instructions these days do not go far.

Q. In the early part of the examination there was a slight difference between us as to phraseology. You remember where I spoke of the joint control and you spoke of a unit control?

A. Yes.

Q. I want to direct your attention back to that matter. You have no personal knowledge of who built the Central Pacific Railroad, have you?

A. Well, I lived in California at that time, and the people who built it were Huntington, Stanford, Crocker, and Hopkins, and their associates. They were known as the "big four" at that time.

Q. When were you born?

A. I was born in Ireland.

Q. When?

A. In 1858.

302 Q. You were eleven years old when the railroad was completed and in operation?

A. I did not go to California until 1879.

Q. Well, did you know anything about the Central Pacific Railroad before 1879?

A. Not of my personal knowledge, except such as a young fellow picks up; but as a matter of personal knowledge about which I could testify, of course, I knew nothing about it.

Q. Now, when you spoke a moment ago about Huntington, Hopkins, Stanford, and Crocker, you did not mean to convey the idea that they physically built the road, of course?

A. No; I referred to knowledge that has come to me since, including talks with Mr. C. P. Huntington.

Q. You did not mean to convey the idea that the road was built for them as individuals, as distinct from the corporation known as the Central Pacific Railroad?

A. I did not mean that at all; I meant that they were the men who promoted it and who succeeded in their plans in accomplishing it.

Q. And that is all that you meant?

A. That was all.

Q. In the same way, confining yourself to your personal knowledge, you do not know who constructed or, prior to 1879, 303 owned any part of what is now the Sunset Route?

A. No.

Q. Up to comparatively recent times, if at all, you have no personal knowledge as to who were the holders of the stock of the Central Pacific Railroad Company or the Southern Pacific Railroad Company?

A. No. In those days I only knew it as incidental to my daily work.

Q. At the present time the Southern Pacific Company has widely scattered stockholders, has it not?

A. The Southern Pacific?

Q. Yes.

A. Yes.

Q. There are perhaps 26,000 different stockholders?

A. About 27,000.

Q. And that is somewhat near what it has been for a matter of dozen years past?

A. I do not know as to that.

Q. Your knowledge on that matter runs back only during the period that you have been president?

A. Yes; and only then when I have had occasion to inquire.

304 Q. There is now no particular group of stockholders that controls the affairs of the Southern Pacific Company, is there?

A. I understand there is not.

Q. I think it appears sufficiently by the answer, but there is no question that the Southern Pacific Company now owns all of the stock of the Central Pacific Railway Company, is there?

A. No, sir.

Q. And it has since 1899?

A. I so understand.

Q. Did you know of the fact of the holdings of stock of the Central Pacific Railroad Company in Europe?

A. No; I would not have any relation to that.

Q. Well, in your connection with the affairs of the company, did you know the fact that some considerable blocks of stock, or some considerable quantity of the stock, was held in Europe?

A. Of which company?

Q. Of the Central Pacific Railroad Company?

A. Yes; I understood that it was.

Q. And that was as early as your first going with the company, was it not, in 1882?

A. I believe so, but I would not be sure as to that.

305 Q. Did you know that those holdings exceeded a majority of the stock?

A. At that time I was not in position to know anything about it except in a hearsay way. My information was very limited at any time about it.

Q. In the San Francisco fire of 1906 the San Francisco records of those companies were burned, were they not?

A. Destroyed by fire when the city burned.

Q. That included the records of the Southern Pacific Company and the Southern Pacific Railroad Company, the Central Pacific Railroad Company and the Central Pacific Railway Company; am I right?

A. If all those records were there at that time, the presumption is that they were burned. My understanding is that they were.

Q. Was nothing in the way of records or papers of those that were there saved?

A. I believe not. I was one of three officers who endeavored to undertake the saving of papers in the morning, but we were driven out by the Army. The building where the papers were stored caught fire later; it took fire later in the day, when the entire 306 business portion of the city was destroyed.

Q. You did not leave the company then?

A. No; I did not leave until six months after.

Q. And you were there at the time?

A. Yes; and until six months afterwards.

Q. The records of all these four companies were kept in San Francisco, were they not?

A. Except such as were kept in New York at the headquarters here. I would have no means of knowing about those.

Q. Do you know what sort of things were kept in New York?

A. No; you see I had nothing to do with that.

Q. At the present time is there in existence anything by way of records of the company or stock books or otherwise showing who were the stockholders in the Southern Pacific Company in 1899 or in 1893 or in 1885, or any of those years?

A. I do not know.

Q. You do not know whether there is or not?

A. No.

Q. Do you in your position as president know of any means of ascertaining with accuracy who were the shareholders in the Southern Pacific Company at those times?

307 A. If there were any record I do not know where it would be kept; I do not know where it is kept now, but I think in New York. I do not think it is kept in San Francisco. I know that the record of stockholders is carried in New York now. As to the records for those preceding years, I do not know whether such a record exists, or, if it does exist, whether it is in New York or not. Our executive offices are here.

Q. What officers of the Southern Pacific Company have knowledge of the records of the stockholders for that period?

A. I assume the comptroller.

Q. Who is that?

A. A. D. McDonald; he is comptroller and vice president, with offices at 165 Broadway.

Q. He is the comptroller of what?

A. The Southern Pacific Company.

Q. Is he comptroller of any of the others—that is, the Central Pacific Railroad Company, the Central Pacific Railway Company, or the Southern Pacific Railroad Company?

A. I do not know as to the organization of those companies whether they have an officer of that title. The organization list is carried here.

308 Q. Do you know where the meetings of stockholders of those companies, or any of them, in 1899 and prior thereto, used to be held?

A. In 1899 and prior thereto?

Q. Yes.

A. I had no relation to the subject then. I understand—I would prefer not to undertake to testify on that.

Q. Does any freight from Nevada to the Atlantic seaboard territory go by way of the Sunset Route?

A. I think there is some wool and hides.

Q. How far to the east does that freight start on the lines of the Central Pacific Railroad? Does it start as far east as Corinne, Utah?

A. I think not; I could not say precisely, but I think it is confined to western Nevada. It may possibly be as far east as Elko.

Q. Elko is about a quarter of the way from the eastern boundary of Nevada?

A. About that.

Q. And that wool is carried to Sacramento?

A. Yes; that would be carried to Sacramento.

Q. And then to El Paso?

309 A. Yes; but it is a small quantity, a very small tonnage.

Q. That movement of traffic has been going on for some years?

A. Yes.

Q. Was it larger some time ago than it has been of late years?

A. I do not know, as a matter of fact, but I think it was.

Q. Prior to 1901 there was considerably more that went through El Paso, was there not, from that country, than since that time?

A. Yes, there was more than since that time; the service was better by the Southern line than it was by direct line to the Atlantic seaboard, by reason of the lack of ability of the lines east to handle it through promptly. It was simply following the line of least resistance; it was a matter of service.

Q. Do you remember a time when in that wool territory the railroad used to issue a bill of lading for fixed weights and count if the shipper left the wool unrouted, but would issue only a bill of lading "shipper's load and count" if the shipper routed through Ogden?

40 A. I do not know as to that, but I can not conceive of a case in which that might be, because if it went around by Galveston we could count it at Galveston and check it up. If it went to the east we would have no such opportunity, but that is a bygone day, you know. The shipper has the right to route now that he did not have in those days. The law has changed since, and that is all gone.

Q. Do you know, as a matter of experience with bills of lading, that a bill of lading "shipper's load and count" was not as good for banking purposes as one for a definite load or weight?

A. If the shipper was good at the bank it was all right.

Q. Yes; if he did not need any collateral it would not make any difference at all; is that what you mean?

A. No; but if he held the bank harmless as against an error in his own count, the bank accepted that notation "shipper's load and count." As a matter of fact, it was a very general way of doing all kinds of business at that time. Even at the principal stations, shippers loading at sidetracks would prefer to take a bill of lading at "shipper's load and count" than to bring their freight to the station and have it checked into the car.

311 Q. Why didn't they always take that that way, then; why didn't they always take it "shipper's load and count"?

A. When it suited their convenience they did.

Q. Do you know whether the ability to give a definite load and count bill, if the wool was left unrouted, had the effect of leaving considerable quantities of it unrouted by the shipper?

A. Do you ask me as a fact whether it did?

Q. Yes.

A. I could not answer that.

Q. You do not know?

A. No.

Q. Is this distinction that I have mentioned to you, as applied to that Nevada wool, entirely new to you as I put it to you to-day?

A. No; I know that bills of lading have been issued "shipper's load and count", and there are bills of lading shipped clean. The clean bill of lading is a superior bill of lading.

Q. You knew, did you not, that the reason for the railroad's doing that was so that they might have the routing over the Sunset Route?

312 A. No; I do not admit that such a thing was done with any such design, or that it was done for any other reason than that it was actually routed by the shipper "shipper's load and shipper's count", and the railroad did not know what the count was. That is the fact. But to state it another way: As I understand your question, it is whether the railroad used that compulsory device to control the routing of business, and that if it went by one route the railroad, without knowing what the count was, would give a clean bill of lading, while if it went by another route they would give a "shipper's load and count." Such practice was never indulged in, to my knowledge.

Q. You have expressed it somewhat differently than I intended to develop from you. What I meant was this: Not that compulsion was exercised upon the shipper, but that a certain advantage—perhaps of some value, and perhaps in some instances not of value—was extended to him as an inducement for him not to exercise his

right to route the freight, leaving him to leave the freight unrouted and take the advantage, if he wanted to, or to route the freight and not take the advantage, as he might please. That is the practice to which I am directing your attention, and I am asking you if such occurred.

213 A. I do not believe it was ever done. I never heard of such instructions being given or suggestions made that it should be done. In fact, I think we would have a fine riot with the shippers if we attempted it any time.

Q. You said that there was some issuing of bills of lading in former times "shipper's load and count"?

A. Yes.

Q. And that that practice has been discontinued?

A. No; I did not say that.

Q. That still goes on?

A. Yes. Where the shipper loads at a point where there is no opportunity to count it, he loads the car at a siding, we will say, in the country, perhaps behind his own barn or packing house somewhere, or delivers the shipment to the carrier and takes his bill of lading "shipper's load and count."

Q. Perhaps I misunderstood you, but I thought you said something in this connection that some practice had ceased, did you not?

A. I said at the time to which you referred, as I understood it, the shipper did not have the right to route, but that that belongs to a by-gone day; that the law has since given him the right to route; he controls his own routing, the carrier does not.

214 Q. Prior to 1906 was there a good deal of shipment of wool from Nevada unrouted to the Atlantic seaboard territory?

A. A portion of the business went that way.

Q. And that unrouted wool—

A. Oh, unrouted? I think none of it went unrouted; I think it was all routed.

Q. Routed by the shipper?

A. Routed by the shipper.

Q. Did none of it go not routed by the shipper?

A. If there was, it would be a very minor portion of it, in all probability; I am giving you the best of my remembrance.

Q. And that wool, up to 1901, was carried largely through Elko?

A. A large part of it.

Q. Were you in such a position in the business of the company in 1883 as to be able to observe in any general way the effect upon the traffic carried by the Central Pacific Railroad proportionally, of opening of the Sunset Line?

A. No.

315 Q. You have no idea of how soon or how extensive the effect was?

A. You see, I was only a year in the service then and knew nothing about it.

Q. The Central Pacific Railway has terminals in Oakland on the waters of San Francisco Bay?

A. Yes, sir.

Q. And has it any terminals in the city of San Francisco?

A. It has not.

Q. The Southern Pacific Railroad has terminals in San Francisco?

A. Yes, sir.

Q. And also has terminals in Oakland?

A. The terminals in Oakland are as one, chiefly Central Pacific, and only in a minor way is there any Southern Pacific terminal in Oakland.

Q. San Francisco freight coming up by the Sunset Route is delivered where?

A. It is delivered in San Francisco.

Q. San Francisco freight coming through Ogden is delivered here?

316 A. In San Francisco; the same terminals. The terminals are used without any relation to where the business comes from.

Q. Is the delivery to the San Francisco terminals made across the water from Oakland or around by rail?

A. Chiefly around by way of Dunbarton Point, which crosses the lower arm of the Bay of San Francisco. Deliveries, whether from the Central Pacific line or from the lines via El Paso are made in San Francisco chiefly by our Dunbarton cut-off, which crosses the lower arm of the bay to Redwood City, and the freight is then carried in over the line of the Southern Pacific from Redwood into San Francisco.

Q. Is any of the freight to San Francisco from or through Ogden carried over the Benicia cut-off?

A. None of the freight moves by the Benicia Route unless in an emergency.

Q. The Benicia cut-off terminates at Port Costa, and your passenger traffic—

A. (Interposing). The Benicia cut-off ends at Benicia. The service from Benicia to Port Costa is rendered by ferryboats.

Q. And the trains from Sacramento and points east of 317 that carrying passengers for Oakland or San Francisco run to Benicia and are ferried across physically to Port Costa and then take the tracks again and go to Oakland?

A. Yes.

Q. And the San Francisco passengers then leave the train and go by ferry?

A. They leave the train at Oakland pier.

Q. And go by ferry to San Francisco?

A. They ferry over to San Francisco.

Q. The line that now runs from Los Angeles to San Francisco is called the "Coast line"?

A. There are two lines, one from Los Angeles by way of Bakersfield to San Francisco, which is known as the "Valley line", and the other is run by the way of the coast line. They have a common stem from Burbank to Los Angeles. The lines fork.

Q. And the coast line is the line that we see as the road along the coast on the map here?

A. Yes; the coast line comes up through Santa Barbara to San Francisco direct.

Q. Does any of the freight which comes through El Paso come up over the coast line?

A. It does.

Q. What is the preferential way for carrying it; over the coast line or over the valley line?

A. It is a matter of convenience. For some time we have been carrying it by way of the coast line.

Q. The coast line is an extension of the road originally running Gilroy, is it not?

A. Yes, sir; originally running to Gilroy and southerly to Solestad and through Soledad south.

Q. Does the Sunset freight coming from through Bakersfield go up over this Southern Pacific line from Goshen or up this line on the east of the San Joaquin River?

A. It takes whichever routes are, for operating reasons, the most convenient. It depends on the volume and direction of the traffic.

Q. Is there anything about Goshen to make it a natural railway terminal?

A. Goshen is the junction point for the branch line into the oil fields.

Q. How big a place is it?

A. Oh, it has a few hundred people.

Q. Your first recollection of that line down to Goshen would be in 1882?

A. Yes; about that time.

Q. Was there anything to amount to anything between Bakersfield or Goshen, then?

A. As I recollect it, at that time that was about all there was in those days. The intention was to build down the San Joaquin Valley.

ley. There are two great central valleys in California. One is the Sacramento Valley, north of Sacramento, and the other is the San Joaquin Valley, south of Stockton. The effort was to get down through the San Joaquin Valley. The Central Pacific built, as I understand it, as far as they could get, and then they resumed the rebuilding south of Goshen, through the Southern Pacific, on their way through San Joaquin Valley and to Los Angeles. I might say, in further answer to your question—I have no knowledge whether it was a coincidence or not—but adjacent to Goshen there is some valuable farming territory, very rich land.

(Whereupon an adjournment was taken until to-morrow, Thursday, September 24, 1914, at 10.30 o'clock a. m.)

Room 720, Custom House,  
New York City, September 24, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClenen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne for the Southern Pacific Company, et al.

WILLIAM SPROULE, the witness under examination at the taking of adjournment, resumed the stand.

Direct examination (continued) by Mr. McCLENEN:

Q. Mr. Sproule, will you take the following dates as being correct, subject to correction? I need them in the further examination, and I think you will probably agree with them.

The Central Pacific Railroad Company joined the Union Pacific near Ogden, making a continuous line from San Francisco Bay to Omaha, May 10, 1869.

321 The Southern Pacific Railroad Company reached its junction with the Atchison at Deming in March, 1881.

The Southern Pacific Railroad Company connected, via the Galveston, Harrisburg & San Antonio Railroad, with the Texas & Pacific at Sierra Blanca January 1, 1882.

The through rail from San Francisco to New Orleans via the Central Pacific to Goshen, the Southern Pacific Railroad Company to El Paso, the Galveston, Harrisburg & San Antonio Railroad, the Texas & New Orleans Railroad, the Louisiana Western, and Morgan's Louisiana & Texas Railroad & Steamship Company, was opened for business February 1, 1883, then connecting with a steamboat line.

from New Orleans to New York, being the steamship line of the Morgan's Louisiana & Texas Railroad & Steamship Company.

The connection between the Central Pacific Railroad and the Rio Grande Western and the Denver & Rio Grande—these last two having since become the Denver & Rio Grande—was made in the summer of 1883.

The Atchison, Topeka & Santa Fe, in connection with the Atlantic & Pacific and the Southern Pacific rails, reached Mojave in 1885.

The Northern Pacific opened through to Portland in 1883.

The Oregon Short Line and Oregon Railway & Navigation Company reached Portland from the lines of the Union Pacific at either Granger or Ogden in 1884.

The Canadian Pacific reached Vancouver in 1887.

The Great Northern reached Seattle in 1893.

The Rock Island and El Paso & Southwestern reached El Paso in 1892.

The Atchison, Topeka & Santa Fe reached San Francisco over its own rails in May, 1899, except for the distance between Bakersfield and Mojave, between which it used the rails of the Southern Pacific Railroad Company, and which it continued so to use.

The Western Pacific was opened through from its junction at Salt Lake City with the Denver & Rio Grande to San Francisco Bay July 1, 1910.

The San Pedro Line from Los Angeles to Salt Lake, and thence over the Oregon Short Line to Ogden, was opened May 1, 1905.

The San Francisco & Portland Steamship Company, owned and controlled by the Oregon-Washington Railroad and Navigation Company, it in turn owned by the Union Pacific Railroad Company, put on a line of steamers from Portland to San Francisco during 1901 the period of the merger, 1901-1913, and this line was extended to San Pedro, the port of Los Angeles, and to San Diego after dissolution of the merger, and is now running from Portland to San Francisco and Los Angeles.

Now, subject to correction if an error has been made, may we take those dates as correct?

A. I should think so, sir.

Q. The Oriental & Occidental Steamship Company was a company owned one-half by the Southern Pacific Company and one-half by the Union Pacific Company, was it?

A. I think it was owned one-half by the Central Pacific and one-half by the Union Pacific.

Q. During what period did that company operate?

A. I do not know when it began. It was dissolved—I could not tell you when it was dissolved; I did not have anything to do with it, save, except simply that we handled the freight if it came to us,

or delivered freight to them. The process of its dissolution I had nothing to do with, and the year I could not tell you. It is easily accessible, however.

Q. For the time being could you approximate either date?

A. I think it was around 1900.

324 Q. That is, that it began?

A. That it was dissolved.

Q. It dissolved around 1900?

A. I think so.

MR. HERRIN. It was a little later than that, I think.

MR. McCLENNEN. It dissolved soon after the merger went into effect, did it not?

MR. HERRIN. We will get that date for you exactly.

MR. McCLENNEN. It would be convenient to have it.

THE WITNESS. It may have been 1902.

By Mr. McCLENNEN:

Q. Roughly, how many years did it run?

A. I would suppose probably twenty years, but I do not know with any positiveness.

325 Q. That line ran between what points?

A. San Francisco and Asiatic ports of call, China, and Japan.

Q. The Pacific Mail Steamship Company has been running for many years?

A. Yes.

Q. And is still running?

A. Still running.

Q. And between what points has that been running and does it now run?

A. Between San Francisco and ports of call in China and Japan including Honolulu and Manila—certain ships.

Q. That line also runs from San Francisco to Panama?

A. It runs also to ports of call on the west coast of Mexico to Panama.

Q. And has it been on all these routes for many years?

A. Yes.

Q. According to the report of the Southern Pacific Company in 1913 the capital stock of that company at par is \$20,000,000, of which the Southern Pacific owns \$11,080,000, does it not?

326 A. Yes.

Q. Do you know, in a general way, how the balance of the stock is held?

A. I do not.

Q. Do you know enough to say whether it is generally distributed, or whether it is held in some one or two interests?

A. I don't know anything about it.

Q. How long has the Southern Pacific held the controlling stock of the Pacific Mail Steamship Company?

A. I don't know.

Q. Would it be safe to say that that majority interest was acquired shortly before the merger of 1901?

A. I do not know whether it was before or after the merger. It has been some time since; I know that.

Q. At the present time are there any other lines running from California to the Orient besides the Pacific Mail Steamship Company?

A. There is the Toyo Kisen Kaisha, which is owned by the Japanese.

A. There is the Dollar Line, which is owned by Robert Dollar and his associates, and there are other ships that run from time to time.

Q. Those three are the only regular lines?

A. The regular liners in regular trans-Pacific trade, in connection with steamship lines or the Toyo Kisen Kaisha Line from California.

Q. Do any of the three lines touch California anywhere except San Francisco Bay?

A. At San Francisco Bay. The Dollar steamers I would not be certain about. They may make other calls.

Q. There are some other lines that run from Puget Sound ports to the Orient?

A. Yes; and also the Canadian Pacific steamer lines.

Q. Prior to the advent of the Atchison in California, no freight anywhere in the East could get into California by rail except over the rails of the Central Pacific Railroad or the Southern Pacific; is that correct?

A. That is correct.

Q. Up to the time that the Atchison became powerful, the Southern Pacific virtually controlled the rates for transcontinental business with California, did it not?

A. In conjunction with its various railroad connections throughout the United States and Mexico. It did not control the rate; it only controlled it as it was a factor in the rate making.

Q. It was, as a practical matter, a controlling factor, was it not?

A. It was one of the controlling factors.

Q. The through rate to California, as a practical matter, could be reduced or raised without the sanction of the Southern Pacific Company?

A. Without the sanction of every road in the line.

Q. Including the Southern Pacific?

A. Including the Southern Pacific; the Southern Pacific could not raise nor lower the rate of its own motion.

Q. The Southern Pacific was the only one that controlled through line from San Francisco to the Atlantic seaboard?

A. To New York.

Q. Or anywhere else on the Atlantic seaboard?

A. No. It controlled a steamship line only from San Francisco to New York.

Q. I mean there was no other road that controlled any through line from California to any point on the Atlantic slope; that is true, is it not?

A. I think that is correct.

329 Q. The Southern Pacific had it within its power, without the consent of the other roads, to determine the rate over the through line?

A. Yes and no.

Q. What were the limitations?

A. The Southern Pacific had to consult its rail connections, has not at any time been in a position of independent control of rates, because their great interest in the Central Pacific and their great interest in the railroad situation generally and in the Sumner Route itself made it highly inadvisable and, in fact, would have made it a piece of folly for them to undertake to dictate rates by their own line to affect the whole situation. Every railroad has to work with its connections. It is a matter of mutual relation and of reciprocal relation in the exchange and interchange of business.

Q. Getting away from the more decorous language of the court, is there room to that used in the rough and tumble of business, is it not true that for years what J. C. Stubbs said as to rates to California on transcontinental business went and what he vetoed would not go?

330 A. Well, the railroad business is not a rough and tumble business, and that statement might be a rough and tumble statement, but it is not true.

Q. Well, is it not pretty nearly accurate?

A. No; it is quite inaccurate; it is not in accordance with the facts so far as comes within my knowledge during the period of my experience.

Q. Mr. Stubbs was undoubtedly the most powerful factor in the Transcontinental Association conferences and later in the Transcontinental Freight Bureau?

A. Mr. Stubbs was a man of powerful personality and would be powerful in any body of which he was a member on any subject.

Q. Then, whatever be the elements which produced the result, he was the most powerful element in those gatherings?

A. I do not think so at all. As a matter of fact, the most powerful element in those gatherings produced the transcontinental rate war, and that was the Atchison.

Q. When did the Atchison start its rate war?

A. In 1886, I think.

Q. And how long did that last?

A. I think the greater part of the year. In fact my recollection is until the Interstate Commerce Commission came in and put the railroad business on a new basis, in 1887.

Q. Well, there are a great many elements that tend to the voluntary reduction of rates by railroads other than rate wars, are there not?

A. Yes.

Q. Is it not a fact that apart from this rate war of which you speak none of the railroads succeeded in making a voluntary reduction of rates to California against the opposition of Mr. Stubbs?

A. That is not so; it is emphatically not so.

Q. Do you bear in mind instances where they succeeded in making such reduction against the opposition of Mr. Stubbs?

A. Why, the meetings with respect to transcontinental rates lasted sometimes for weeks. It is a give and take question; it is a question of response to mutual needs, to railroad needs, to the economic questions of the time, and it is a question of persuasion or conviction or demonstration, each road with respect to the other, and its connections, and other roads engaged in the same business.

It also has relation to the rates made to and from other Pacific coast ports; and the northern lines, for example, had a distinct influence on the rates made in California. Besides that, the Southern Pacific line was only a part of the through line by its important connections and by the road over which the great volume of the business was done. The Southern Pacific had to give heed to what its connections contended for just as much as they had to give heed to what the Southern Pacific contended for, and it was a question of business negotiation and not a dictatorial stand upon the part of anybody. It was a business question at all times.

Q. Is this an accurate statement, put in the form of question and answer:

"Q. As a matter of fact, could any through all-rail rate be made from the Missouri River or east to California without the consent of the Southern Pacific in the first instance, and subsequently, upon its advent, the consent of the Atchison, Topeka & Santa Fe?

"A. No."

A. Of what period does that speak—before the advent of the Santa Fe?

Q. Before the advent of the Santa Fe.

A. I would answer that a rate could not be made over the Central Pacific Railroad without the consent of the Central Pacific Railroad at that time, and could not be made over the Union Pacific Railroad without the consent and concurrence of the Union Pacific Railroad at that time. A rate could not be made into Chicago without the consent of the Chicago & Northwestern Railroad Company, for example, from Omaha to Chicago at that time. That is true of every railroad over which the rate was operative.

Q. And is the statement which I put to you in the form of question and answer an accurate statement. I will repeat it to you without having it go down on the record again.

(The quoted question and answer were again read by Mr. McClenen.)

A. I was too recently in the service at that time to answer that question from any knowledge of my own, but I will make the statement as I have already made it.

Q. Then you leave it that you do not know whether or not that statement—

A. (Interposing.) Whose testimony is that?

Q. I am reading from the testimony of J. C. Stubbs.

A. I would prefer to stand upon Mr. Stubbs' testimony.

Q. It is at page 3901 of the so-called merger record.

A. As to what occurred at that time, Mr. Stubbs is the authority not I.

334 Q. Well, there is nothing in your recollection of the situation that would be at all at variance with that answer of Mr. Stubbs's?

A. I was not in a situation at that time; my understanding of the situation is as I have stated it.

Q. You will notice that this question covers as well the time after the Atchison was in operation. Indeed, it covers certainly every time up to the merger, and by that time you had a position which would put you in the way of knowing the situation?

A. Yes; the rate would not be made over the Southern Pacific without the consent of the Southern Pacific.

Q. Now, dealing with the period as a whole up to 1901, is the statement as Mr. Stubbs has put it correct?

(The statement was again repeated by Mr. McClenen.)

A. I do not construe that the way you construe it at all. I construe him to say—

Q. (Interposing.) You misunderstand me. I am not construing it at all.

Mr. DUNNE. Let him finish.

By Mr. McCLENNEN:

Q. I just read you the question and the answer, and I ask you if it is correct.

Mr. BLAIR. You can ask him whether it is correct, but not whether the construction is correct.

Mr. McCLENNEN. I am not asking him that.

The WITNESS. You asked me whether that statement is correct, as to the Southern Pacific up to the merger period, to 1901. I say, according to my understanding of what that question is, it is not correct, and I make that answer because I can only assume from your question that you do not understand that answer as I understand it.

By Mr. McCLENNEN:

Q. Am I right in understanding you that this statement which I now read to you is not correct, namely:

(The statement was again read by Mr. McClellnen.)

A. When the Southern Pacific was the only line, the only road from California to the east, the consent of the Southern Pacific was necessary as one road in the through line. When the Atchison came there was another road serving California, and the Southern Pacific's consent was necessary after that only with respect to the Southern Pacific lines, the Atchison having control of their own line.

Q. As a practical matter, the interests of the railroads were so interwoven that the Southern Pacific could not reduce its rates prudently against the opposition of the Atchison, or the Atchison against the opposition of the Southern Pacific; is not that true?

A. As a matter of fact, they did make such reductions.

Q. And at the time of the rate war that you speak of?

A. No; I am speaking of from time to time as the interests of each predominated.

Q. It was the practice of these roads to confer before any changes in rates?

A. As a rule it was. That rule was honored in the breach from time to time.

Q. And Mr. Stubbs, who gave this testimony that I have read to you, was the representative of the Southern Pacific in those conferences?

A. Yes; either personally or through his subordinate officers.

Q. The man better able to judge than almost anyone else in the entry of the actual influence of the Southern Pacific in the Trans-continental Association? Is that true?

337 A. As a generalization, I suppose that is so. I do not think it would be at all conceded by the officers of the other railroads, however.

Q. Is this a correct statement, as of the period up to 1901, and after the Santa Fe had got through to San Francisco:

"The Santa Fe forms a line under one management from Chicago and could do as it pleased. It did not have to ask anybody. The Southern Pacific had its own line all the way through to New York and could do as it pleased."

Was that a correct statement?

A. As a matter of dictum, that is correct. As a matter of practice, it is not so.

Mr. DUNNE. To what page are you referring, Mr. McClenen?

Mr. McCLENEN. I read from Mr. Stubbs's testimony, page 390.

The WITNESS. If they were in a world apart by themselves, they could do that, each of them.

By Mr. McCLENEN:

Q. Apart from the effect as inviting retaliation, the fact 338 was, on business between New York and San Francisco, the Sunset line had the power to determine what rates and what service should prevail, and was the only line that could actually, effectively speak without the cooperation of other lines as to business between those points. That is true, is it not?

A. As to business between—

Q. (Interposing.) San Francisco and New York City.

A. It was not so much a question of retaliation as a question of alienation. It was necessary to the Southern Pacific that it retain the friendship and good will and influence of its connections east of Ogden chiefly, east of El Paso, and that it retain the good will of the railroads centering in New York, and those grave considerations upon which the welfare of the Southern Pacific's own business depended, would prevent it from taking such independent action between New York and San Francisco as would be inimical to its relations with its rail connections generally.

Q. The most powerful line running west from the Missouri River has always been the Union Pacific, has it not?

A. The most powerful line in transcontinental traffic has always been the Central Pacific and Union Pacific's through line.

339 Q. The Union Pacific could not, as a matter of practical railroad business, prior to 1910, get into California except by the use of the rails of the Central Pacific. That is true, is it not, barring its power to get in over the San Pedro line to Los Angeles after some time, say, in 1905?

A. My recollection is that it was into San Francisco by its own line through Portland in connection with the steamship line.

Q. You mean carrying—

A. (Interposing.) Freight.

Q. Freight by way of Granger or Ogden over the Oregon Short Line?

A. Yes.

Q. And the Oregon Railway & Navigation Company?

A. Using its own steamers from Portland to San Francisco.

Q. And thence from Portland by boat to San Francisco?

A. Yes.

Q. In your opinion as a railroad man was that a practicable line for real business?

A. It was.

Q. Was it a line that was considerably used?

340 A. It was not considerably used.

Q. Was it a desirable line?

A. It was like any mixed rail and water line—not as desirable as a through rail line, other conditions being equal.

Q. Well, as desirable in its territory as the mixed rail and water line of the Sunset line?

A. The conditions were unequal, because the Union Pacific's line stopped at Omaha, you see; it did not have the transcontinental line.

Q. In your opinion, that line through Portland from Ogden to San Francisco was a substantial factor in the competitive conditions for California business, was it?

A. As it happened, it was only temporary. It was potential, but not powerful.

Q. It was potential as soon as the rails from Ogden or Granger to Portland's water front were completed, was it not?

A. It was potential; yes. There were possibilities there.

Q. And that was in the middle eighties somewhere—perhaps 1884?

341 A. It was in the middle eighties. That it was practicable is shown by the fact that the Northern Pacific, the Great Northern, and the Canadian Pacific have all used water routes similarly on San Francisco business.

Q. This is an accurate statement of fact, then, in your opinion, is it:—

“The Portland route was a factor in rate making to the coast, using Portland route as descriptive of this route from Ogden to Portland and by boat to San Francisco.”?

A. Using Portland to Puget Sound also, it is correct.

Q. You have been of that opinion for years?

A. It has been a factor for years.

Q. And the opinion which you now express is the opinion which you have had for years?

A. I think so.

Q. If the Union Pacific was dissatisfied with the rates to which the Central Pacific would agree, or with the service which the Central Pacific furnished for the business tendered by the Union Pacific, and in consequence had adopted this Portland route, could it have done so without serious danger of loss of business initiating on the lines of the Southern Pacific?

342 A. That is one of those hypothetical questions in its nature.

I think, as a matter of practice and of fact, that no such thing occurred. There was no alienation of the Central Pacific's business from the Union Pacific. But that is a question of recollection.

Q. As bearing upon this competitive factor that we have been speaking about, I am asking you for your opinion as a railroad man.

A. I do not know why I should be asked to guess at a question of fact.

Q. Do you regard the probable effect of putting into operation that Portland route, when it never was put into effect in a very substantial way, as a question of fact?

A. It is a question of historical fact. It is a series of transactions that have all occurred, and I do not know why I should sit here and guess at probabilities growing out of it, when those probabilities have elapsed years ago.

Q. Were you aware of the contention made on behalf of the Southern Pacific Company in the merger suit to the effect that that route as a practical matter, was not a factor in competition, because if

343 the Union Pacific had attempted to send its freight that way it would have resulted in retaliatory measures by the Southern Pacific Company?

A. No; I had nothing to do with the merger suit.

Mr. HERRIN. That was the Union Pacific's position. We only spoke with "our master's voice" in the case.

The WITNESS. You see, I left the service in 1906 and did not return to it until 1911. I was not in the merger litigation in any way, and have no knowledge of what was testified to.

By Mr. McCLENNEN:

Q. You give it, then, as your opinion that as a business matter as a matter of prudence in railroading—that the Union Pacific, if dissatisfied with the treatment given it by the Central Pacific, could have effectively competed by carrying its freight through Portland to San Francisco and then distributing it in California over the local lines there?

A. It would not be a matter of effective competition; it would be a matter of strategem. The competition would not be effective to the same extent as the continued use of a through line would be.

Q. Then, so far as competition by the Union Pacific with the 344 Sunset Line is concerned, it was, as a practical matter, dependent upon some sort of alliance with the Central Pacific, was it not?

A. As the Central Pacific was also dependent on the Union Pacific for the alliance.

Q. Did the Central Pacific route any freight over the Denver & Rio Grande and Missouri Pacific prior to 1901?

A. I think they did.

Q. The Central Pacific had over those lines a means of sending its freight to the Missouri River without the use of the lines of the Union Pacific?

A. Yes.

Q. It used those lines to a very considerable extent?

A. To reciprocate for business that was delivered by those lines to the Central Pacific.

Q. There were times when the freight of the Central Pacific destined to points east of the Missouri River passed over the lines of the Denver & Rio Grande to the extent of more than twenty-five per cent, were there not?

A. That is too close a figure for me to testify to. I know that the vast volume of business went at all times over the Union Pacific. Much the smaller quantity at any time went over the 345 Rio Grande. I would not be surprised if there were times when the volume might reach the figure you name.

Q. And there may have been times when it reached the figure of forty-five per cent?

A. I would regard that as highly improbable, but I can not say from memory.

Q. In other words, for practical railroad purposes, from Ogden to California points prior to 1905, we will assume—assuming that is when the San Pedro was opened—the Central Pacific had a natural rail monopoly?

A. That is not correct. The Santa Fe came into southern California in the year that was named.

Q. I think perhaps you have missed the point of my question. I said from Ogden to California.

A. Oh!

Q. The Central Pacific did have a natural rail monopoly?

A. That was the only road in the line from Ogden to San Francisco.

Q. The Union Pacific has not had a rail monopoly from Ogden to the Missouri River since some time in the early eighties, has it?

A. Since the Rio Grande and connections came to Ogden.

346 Q. In your opinion as a railroad man, dealing with practical railroading, not law or theoretics, was not the control of the Central Pacific over rail freight between California and points east of the Missouri River much more powerful than the control of the Union Pacific prior to 1901?

A. Over California freight?

Q. Yes.

A. To the extent that there was any control, the Central Pacific ought to be the more influential.

Q. The result of that was that the Southern Pacific Company, if it controlled the operations of the Central Pacific and the operations of the Sunset Line, controlled both of the gateways to California, and prior to 1905 all of the rail gateways to California except such as the Atchison could control? That is true, is it not?

A. It is true, depending upon the construction you put upon the word "control"; but "control" is a very large word to use in this connection, because the interstate-commerce act took effect in 1887 and removed from the railroads the control as popularly understood.

Q. The practical movement of transcontinental freight is dependent on the existence of a joint through rate, is it not?

A. Yes.

347 Q. That is, as a practical matter?

A. The law requires that.

Q. I mean that, as a practical matter, if a joint through rate does not exist over a given line and there are other means of transportation on a joint rate, the freight will not move on a sum of the locals?

A. If the sum of the locals exceeds the through rate in force by another practicable line, the freight would not move over the roads that impose the sum of the locals.

348 Q. It is in consequence of that, is it not, that the taking out of a joint rate is described in railroading as closing the gateway?

A. For that piece of business. This closing of the gateway does not mean that the carriers will not receive and transport the freight. For instance, if one line finds, for example, that the lumber rate is too small and it does not want that business it says, "Don't put that rate in by our line, and if it is in take it out." The other lines may keep it in, regarding it as desirable business for them. These lines would keep the gateway open, whereas the other roads would close that gateway.

Q. The tracks would still be open for the freight to pass on the ~~real~~ rates?

A. It would not pass, as a matter of fact.

Q. It would not pass? That is the situation, is it?

A. Yes; unless there were means of redress later.

Q. Now, it is true, in your understanding, is it not, that prior to 1906 railroads were not obliged by law to maintain joint rates?

A. I think they were.

Q. You think the railroads were, prior to 1906, obliged to file joint rates?

A. And my recollection further is that the law prior to 1906 gave the Interstate Commerce Commission the authority to open through rates of their own initiative if there was not already a practicable rate in existence.

Q. Prior to 1906 if the connecting carriers did not agree on what joint rate should be do you know of any way by which a joint rate could be determined?

A. My recollection is that prior to 1906 complaint could be made to the Interstate Commerce Commission and they would determine it.

Q. Not quite expecting this answer I will put the question in this way: You know of no practical method, do you, except such, if any, the Interstate Commerce acts may furnish, of instituting a joint rate or maintaining a joint rate over two connecting roads, one which is unwilling to consent to it; is that true?

A. That is a correct statement. That refers to interstate business. That is correct as to interstate business.

Q. Then, except so far as the Interstate Commerce acts may give relief the Union Pacific as a matter of practical railroad was dependent upon the consent of the Central Pacific to maintain a joint rate, and in consequence to have a practical means of access to California terminals, prior to the completion of the San Joaquin line; is that true?

A. As a matter of practical railroading, when any line puts in a rate all the lines put in the rate as a rule. No one road has the power to prevent the rate as a matter of practical railroading.

Q. I appreciate what you say they might do, as a matter of business, but I am right in my statement that they were dependent upon the consent of the Central to get practical access to San Francisco?

A. As a matter of practical railroading, if necessary, the rate would be put in by another line; then the Union Pacific-Central Pacific line would have to put it in anyway, if they did not join together in putting it in, as they did frequently initiate rates them-

Q. What other line prior to 1905 could, without the consent of the Central, put in a joint rate to cover traffic from Ogden to California terminals?

351 A. Not from Ogden, but I understood you were talking through transcontinental traffic. The Santa Fe could.

Q. No; I was speaking of the Union Pacific's position.

A. In transcontinental traffic?

Q. Yes; in transcontinental traffic the Union Pacific was dependent upon having the Ogden gateway to California open was it not?

A. Yes; to San Francisco.

Q. And the Union Pacific was dependent on the Central Pacific to keep that gateway open?

A. Yes; they were a through line. Perhaps I should explain, in a matter of practical railroading, two roads do not come and sit down together in a corner and debate these things the way we are doing here at all. They get together with their various connections, roads interested in the business and consider what is the wisest thing to do, and proceed to put the rates in effect, or not put them in effect, as the case may be.

Q. These railroad men are business men?

A. They are business questions.

Q. And they exercise the power that they have in the way that seems to them best?

352 A. Yes. It is a question of the through line; it is not a question of the road west of Ogden as a competitor, or of the road east of Ogden, because it is not. They are connections; there is one through line, and the line is debating what is the wise thing to do.

Q. In that respect they are in the same position as any other individual who, even if he has the power to control, may find it wise not to exercise that in a way that is injurious to the rights of others; that is about all that means, is it not?

A. Excepting that that power by the nature of things is extremely limited. The control is a commercial and economic control with respect to the making of rates.

Q. After the Union Pacific acquired the control of the Southern Pacific Company the freight coming over the Central Pacific was bound to points being east of the Missouri River went almost entirely over the Union Pacific to the exclusion of the Denver & Rio Grande, did it not?

A. The Southern Pacific and Union Pacific solicited for the Union Pacific line with the exception of such as went by the other gateways.

Q. And the result of that solicitation was to diminish

353 greatly the proportion that had been going over the Denver & Rio Grande.

Rio Grande and increase correspondingly the proportion going over the Union Pacific?

A. Yes; and a further result was to cause the construction of the Western Pacific, which diverted since its construction a great deal of business from the Union Pacific.

Q. That is, as a means of salvation to the Missouri Pacific and the Denver & Rio Grande they constructed the Western Pacific?

A. Yes.

Q. That change in the passage of the traffic—freight going to a considerable extent over the Denver & Rio Grande to going only to small extent that way and to a much larger extent over the Union Pacific—was accomplished without the closing of any gateway, but almost entirely by the preferential solicitation of the Southern Pacific Company and of the Union Pacific Company, was it not?

A. And their connections.

Q. It was a conspicuous illustration of what solicitation may accomplish in determining the routes of freight travel?

A. It was a conspicuous instance of the force of a man of genius.

Q. What?

A. It was a conspicuous illustration of the force of a man of genius. If under any other circumstances at any other time that control had been acquired in a normal way, there might have been no effect on the Union Pacific as there was.

Q. The same kind of influences which turned that traffic so much over the Union Pacific to the loss of the Denver & Rio Grande has played some part in turning freight originating in Oregon and north and central California to the Sunset line; am I right?

A. The solicitation for the Sunset line has been the same with respect to Atlantic seaboard business during the period of the merger during the period before and since.

Q. When the Union Pacific obtained control of the Southern Pacific Company there was inaugurated an era of great improvement of the Central Pacific Railroad, was there not?

A. There was.

Mr. HERRIN. And of the Union?

The WITNESS. And of the Union.

By Mr. McCLENNEN:

Q. Just take it a little at a time. The roadbed of each road was greatly improved?

A. You mean of the Southern Pacific and the Union Pacific?

A. The Union and the Central I am speaking of now.

A. Yea.

Q. The service over the rails of the Central-Union was greatly improved?

A. Yes.

Q. The schedules were better kept on the freight trains than had ever been before?

A. That is not quite uniformly true. The amount of construction that was going on both upon the Union Pacific and upon the Central Pacific was not favorable to the best service at the time. The effect of those improvements was, of course, an improvement in the service.

Q. Did the construction of the work over the Central and Union continue during the whole period from 1901 to 1913 to the usual extent or were the unusual construction works accomplished in the early part of the period?

A. The heavier construction was in the earlier part of the period affecting the main line.

Q. After the completion of the work the freight trains kept their schedules better than ever before, did they not?

A. I do not know as to that, but I would say that the effect of those improvements was an improvement in the service.

Q. To render such an improvement in the service over the line from Omaha to San Francisco Bay required that the Central as well as the Union line be in the control of the organization. Had the policy of making such improvements?

A. Improvements in what, service, did you say?

Q. In service.

A. No; the two properties were operated separately.

Q. But they were operated, although separately—as a matter of fact, as a matter they were operated under the supervision of the same men, were they not?

A. Yes; they were in the same executive control.

Q. Put in another way, the Union Pacific could not make up its ambition for really improved service from Omaha to San Francisco Bay without the cooperation of those in control of the Central Pacific Railroad. That is true, is it not?

A. Yes; and that cooperation prevailed before the merger period and prevails since the merger period.

Q. During the period before the merger was one of the duties of the solicitors in the territories which the Southern Pacific desired to serve over the Sunset Route to watch the movement of traffic, and when they found that it was going through Omaha, to follow up the shippers and see whether they could be persuaded to send it over the Sunset Route?

A. I think that was a common practice among all lines, to the routing of business over other lines.

Q. Is it true that the Sunset Route is a natural competitor of all other carriers operating between points on the Atlantic and in the Middle West on the one hand and points on the Pacific coast and in the Orient on the other?

A. The Oriental business is not sought by the Sunset Route.

Q. Leaving out that part, is that correct?

A. That, as a generalization, is correct. Every road is the natural competitor of every other road, and every route is the natural competitor of every other route.

Q. And in that sense the Central route, in conjunction with its connections, is, and for many years has been, a natural competitor to the Southern?

A. By the "Central route" you mean the through line, of which Central Pacific forms a part?

Q. I said, "With its connections"; yes. The volume of traffic for which it, with its connections, is a competitor is very large?

A. The Central Pacific-Union Pacific route?

Q. Yes.

A. Yes.

Q. It was apparent to you as a railroad man in 1899 that if the Government lien on the Central Pacific line from Ogden to Sacramento and from Sacramento to Niles and San Jose, possibly with a break of five miles between Brighton and Sacramento, was released and the property sold to interests other than the Southern Pacific Company that would put the Central Pacific Railroad, with connections, in an independent position in this competition, was it not?

A. Whether it would put it in an independent position would depend upon the outcome of the sale. It would be a capital operation with respect to the Southern Pacific.

Q. You are using the word "capital" in the sense of "execution," in the sense of "bully"?

A. In the sense of "amputation."

(Whereupon a recess was taken until two o'clock p. m.)

#### AFTER RECESS.

WILLIAM SPROULE, the witness under examination at the taking of a recess, resumed the stand for further direct examination.

The WITNESS. Before beginning the session I desire to correct my testimony with respect to the Occidental and Oriental Steamship Company. I find that the Union Pacific was a half owner of that company, but neither the Central Pacific nor the Southern Pacific owned the other half, which was privately owned.

By Mr. McCLENNEN:

Q. By interests not affiliated with any railroad?

A. It was originally owned, I believe, by the Pacific Improvement Company, which was dominated by what were known as the Big Four. How it was subsequently owned as to that half interest, I do not know. I also find that the liquidation occurred in 1909-1910.

Q. And have you the beginning date?

A. I have not the beginning date; I could not find it.

361 Q. Just before adjournment I was speaking to you about the condition presented by the possible foreclosure of the Central

A. Yes.

Q. There was no way, was there, at that time of preventing the condition except by the acquisition of the railroad, either directly by the Southern Pacific or by some company owned by it?

A. I do not know what was in the mind of the Government at the time, but as I understand it the Government negotiated with the Southern Pacific for the purpose of having the Southern Pacific sponsor for the Central Pacific debt instead of foreclosing, as I understand it the Government might have done.

Mr. McCLENNEN. I will ask to have all the answer stricken out after the words "I do not know what was in the mind of the Government," on the ground that it is not responsive to the question and makes a statement of the witness's own knowledge.

By Mr. McCLENNEN:

Q. In addition to the objection, I do not think your answer 362 thus far quite answers the question, so I will ask to have it read, if you will follow it, and see if you can give me a direct answer.

A. Don't you desire that the preceding questions be read and the two go together? I want to get that connection.

(The record was produced, and the witness read the questions and answers in connection with this subject, as follows:)

"Q. It was apparent to you as a railroad man in 1899 that if the Government lien on the Central Pacific line from Ogden to Sacramento and from Sacramento to Niles and San Jose, possibly with a break of five miles between Brighton and Sacramento, was foreclosed and the property sold to interests other than the Southern Pacific Company, that would put the Central Pacific Railroad with its connections in an independent position in this competition, was not it?

"A. Whether it would put it in an independent position would depend upon the outcome of the sale. It would be a capital operation with respect to the Southern Pacific.

Q. You are using the word 'capital' in the sense of 'execution', in the sense of 'bully'?

A. In the sense of 'amputation.'"

(The reporter then read Mr. McClenen's question, as follows:)

Q. There was no way, was there, at that time, of preventing that action except by the acquisition of the railroad either directly by the Southern Pacific or by some company owned by it?"

The WITNESS. I do not know what was in the mind of the Government. That was the method chosen to dispose of it. What would have happened if the Government had taken that course I cannot say, but if it were sold and independently owned it would have formed a main shank of railroad as described without feeders or laterals, and would not be an effective railroad system even for purposes of the Government itself or those who might thus become the owners of the road.

Mr. McCLENNEN. This answer I will also ask to have stricken out as not responsive, as a statement of conclusion of fact and of law, and an attempted interpretation of written instruments which should speak for themselves, and as a statement of matters not of the witness' knowledge.

By Mr. McCLENNEN:

Q. The line of railroad from Ogden to San Francisco Bay, if independently controlled, would in its natural business association with the Union Pacific be a pretty effective line for San Francisco business from points east of the Missouri River, would it not?

A. That line as described did not reach San Francisco, and would not be an effective line.

Q. I said San Francisco Bay.

A. The line as described would not be an effective line. San Jose is three miles from the lower end of San Francisco Bay, and such a line itself would not be an effective line to San Francisco Bay.

Q. In answering you have elected to speak of a different line from one I put in my last question, and I repeat the question: An independent line from Ogden, or the junction near Ogden with the Union Pacific, to San Francisco Bay at Oakland would be a pretty effective line for freight between San Francisco Bay and points east of the Missouri River, would it not?

A. For business originating at or destined to San Francisco, yes.

Q. Now, the only way of preventing the falling of so much of that line as lay between Ogden and San Jose, with a possible hiatus of five miles near Sacramento, into the hands of independent parties to use as a means of competition on the fore-

closure of the Government lien was to acquire that line directly from the Southern Pacific, or by some line owned by the Southern Pacific?

A. It seems to me that that is an inference.

Q. Does there appear to you any other way in which that result could be accomplished?

A. Unless the Government itself took it.

366 Q. If the Government itself took it, it would be in a position to that extent, with eastern connections, to compete with the Sunset line, would it not?

A. The Government would take the place of the Central Pacific in its relation to the Federal acts.

Q. The purpose sought to be accomplished by the written contracts and conveyances which were made was to prevent the possibility of such a condition arising?

Mr. BLAIR. We object to that on the ground that the written instruments speak for themselves and that this witness has not been shown to know the purpose of the parties to that transaction.

The WITNESS. As I understand, it was to prevent the Southern Pacific losing a dominant and highly important part of its system without which it would not have been able to give the public adequate service.

By Mr. McCLENNEN:

Q. The Southern Pacific did not at that time own a share of the stock of the Central Pacific Railroad Company, as far as you know, did it?

A. That I do not know.

367 Q. In your connection with the various companies it never has come to your attention, has it, that the Southern Pacific Company ever owned any stock in the Central Pacific Railroad Company?

A. My relation with the property was not of a character that would bring me into touch with these fiscal relations or questions of railroad ownership.

Q. Do you not see, Mr. Sproule, that you have not answered the question at all? I am simply asking this—

A. (Interposing.) And I do not know what was the stock ownership at that time.

Q. Bearing in mind the limitation that you have just stated, it is a fact, is it not, that in your relations of that time, or any subsequent time, with the Southern Pacific Company it has never come to your attention that the Southern Pacific Company ever owned any stock in the Central Pacific Railroad Company?

A. That I do not know. I do not know whether they owned stock or not of the Central Pacific Railroad Company.

Q. I have not asked you in this question whether they owned it or not. I have simply asked you if it is not a fact that it has never come to your personal attention in your relations with the Southern Pacific Company at any time?

A. It is not a matter that would come to my attention necessarily.

Q. And it never has come to your attention?

A. It may have come to my attention repeatedly and slipped my memory, but I do not retain memory of it.

Q. I will put the question again. I think you can hardly have followed the last one.

It never has come to your attention that the Southern Pacific Company owned any of the stock of the Central Pacific Railroad Company?

A. I am not trying to evade answering your question at all. I am trying to answer your question. I have already said in three or four different ways that I do not recollect it.

Perhaps I might explain that these properties have been handled as one property; they have not been handled as split-up properties; and it was not necessary for me to know it.

Mr. McCLENNEN. This statement, starting "Perhaps I might explain," I ask to have stricken out as not responsive and as a statement of a conclusion and not of fact.

By Mr. McCLENNEN:

Q. It is customary among connecting railroads over routes that are feasible physically and from a business standpoint to make joint rates, is it not?

A. It is.

Q. And has been for many years?

A. Over practicable routes; yes.

Q. Is it not true that up to 1901 the Union Pacific was absolutely dependent upon the Southern Pacific with respect to through rates, through billing, through cars, through train service into California territory?

A. It is not.

Q. Put in the form of question and answer is this a correct statement:

"What was the position of the Union Pacific with respect to through rates, through billing, through cars, through train service into this California territory?"

"A. Absolutely dependent upon the Central Pacific lines."

Mr. HERRIN. Was not that the examination on the part of the defendant in that case that you are reading from?

Mr. McCLENNEN. This was the examination of Mr. Stubbs—

Mr. HERRIN. By defendant's counsel?

Mr. McCLENNEN. By Mr. Dunne, as defendant's counsel, in the merger case.

Mr. HERRIN. I thought so. You remember that we reserved an exception to any change of position in this case to what the Government maintained in the other. We do not need to renew that to every question. I am simply calling attention to it.

(By request the reporter repeated the pending question as follows:)

"Q. Put in the form of question and answer is this a correct statement:

"What was the position of the Union Pacific with respect to through rates, through billing, through cars, through train service into this California territory?

"A. Absolutely dependent upon the Central Pacific lines."

The WITNESS. As to through rates, rates were made jointly, and they were dependent upon each other for the making of the rates over that line.

As to through billing, that was, in like manner, a matter of joint arrangement.

371 As to through cars: A very large part of the car supply for through business came to the Southern Pacific from the Union Pacific and was necessary to carry that business; and without the Union Pacific cars the Southern Pacific would have been unable to load a large and important part of the through traffic. The Southern Pacific was dependent upon the Union Pacific for an important part of its vehicles of carriage.

As to through train service: That has always been by cooperation between the two companies, and the Central Pacific train service was as necessary to the Union Pacific as the Union Pacific train service was necessary to the Central Pacific; and that, again, is an interchangeable relation; that is, the Southern Pacific could not handle that business if it had not been for the cooperation of the Union Pacific. It was not a question of one road being at the mercy of the other. There was no such condition.

By Mr. McCLENNEN:

Q. If it were changed to say that each, the Union and the Central, was absolutely dependent upon the other in these four respects, would that be correct?

A. That would be nearer the condition.

372 Q. That would be absolutely the condition, would it not?  
A. Not absolutely.

Q. With what reservation? Why not absolutely dependent, prior to 1901, in those—

A. (Interposing.) Because the Union Pacific had another route.

Q. You now refer to the one through Portland that we spoke of?

A. Yes; which they could use, just as the Northern line used the water route.

Q. With that exception, the statement would be correct?

A. Or could divert their business through their Colorado junctions away from the Central Pacific.

Q. With those exceptions, the statement would be correct?

A. I think the statement is correct.

Q. In the routing of citrus fruits, from 1899 to 1910, the Southern Pacific Company reserved the right to do its own routing, did it not?

A. Yes; that was a condition on bills of lading of all carriers.

Q. That was a plan that was arrived at by the railroads to overcome difficulties due to the rebating by the intermediate carriers?

A. It was a rule arrived at by all the carriers, the Union Pacific, the Southern Pacific, and all the other carriers engaged in the through traffic, originally because of the difficulty of making through routes, and, secondarily, because there was a system in effect in the earlier days of transcontinental business under which the shippers had their freight billed under one set of rates and received a refund on the basis of another set of rates, provided the routing was in the hands of the carriers. That was the original plan, or one of the early plans, worked out by the transcontinental lines to secure business as against the water routes, and a plan which, however, lapsed in the eighties; but the provision in the bill of lading remained uniform through subsequent years, for a long time. It had no significance as to any particular road or any particular route; it applied to all alike.

Q. During the period that the Southern Pacific Company, with the other railroads, as you spoke of, reserved the right to route this traffic, the Southern Pacific Company, by its internal arrangements, used to provide for a certain percentage of it to go through El Paso, and a certain percentage of it to go through Ogden, did they not?

A. As I recall it, not by percentages; or, if it was by percentages, it was based upon the climatic conditions under which experience showed that the business would move. In every year the main volume of the citrus-fruit business has moved through the southern gateways because of the milder climate, and about the middle or toward the end of March, the main bulk of it moves up to the northern gateways, because the southern climate has become hot. The northern gateway in the earlier part of the season is dangerous from frosts and is mild as the springtime comes.

The division of the citrus-fruit business between the southern and the northern gateways has been based upon climatic conditions, at

the instance of the shippers, who, for some years, have done their own routing altogether, and still divide it that way.

Q. You refer to the years since 1910, perhaps?

A. Yes.

Q. It was the regular thing—

A. Oh, long before 1910.

375 Q. Was it?

A. Yes; I left the service in 1906, and it was the rule years before that. The shippers did their own routing. Perhaps I should add that as long back as I was actively connected with the service the shippers did their own routing of oranges, irrespective of the clause in the bill of lading.

Q. That is, the clause reserving—

A. (Interposing.) Reserving the right to route. The carriers did not exercise that right.

376 Q. Well, do you recall that after this plan was put into operation by the railroads, say in 1899, then the Southern Pacific Company used to issue directions, say in February, to their men in the fruit country, saying "On and after March 1st, for instance, route citrus fruits 15 per cent through El Paso and 10 per cent through Ogden?"

A. No, the shippers designated the route. Generally the shippers came to the carriers and arranged for the train service ahead of the movement. At that time the car lines had a good deal to do with the movement because of the icing and ventilator arrangements, and the routing grew out of that combination of general conditions with the purpose of giving the business the best service.

Q. Look, for instance, at what purports to be a print of a letter which I show you here. Were you not aware of such directions as appear in that letter?

Mr. BLAIR. Please state in what pamphlet or volume or book that is.

Mr. McCLENNEN. I am showing the witness what purports to be a letter of December 29, 1899, on page 599 of the transcript of the record in the so-called "Orange Routing case"; that is No. 1377 of the October term of the Supreme Court of the United States, entitled "Southern Pacific Company and others against Interstate Commerce Commission", appearing to be a letter addressed to Mr. Charles Selyer, agent Southern Pacific Company, Los Angeles city, and signed by "G. W. Luce."

The WITNESS. That is back in 1899?

By Mr. McCLENNEN:

Q. Yes.

A. I think you will find, if my recollection serves me right, that was the signal exception to the rule and was adopted for

purpose of putting a stop, if the carriers could, to the rebating which was then prevalent and which had grown to be such an abuse.

Q. That is, the rebating by the intermediate lines?

A. Rebating by the intermediate lines, and they temporarily revoked that permission to route so as to try to break up the illegal practices which prevailed and which the initial lines desired to take every means to guard against being made a party to.

Q. Well, now, what I asked you was, is it not true that during that period when that plan of as you say breaking up the rebating practice was in operation, the Southern Pacific Company used to issue to its agents instructions from time to time to the effect "Route 85 per cent of the citrus fruit El Paso and 15 per cent through Ogden, beginning at such and such a date"?

A. I think that is true. The endeavor was, as I recollect it, to break up the rebating without doing injury to any of our connections, and it was our connections that called on us and insisted that we must as part of the through line stand with them in taking steps to break up the rebating. We therefore put out such instructions as would give to our connections, so far as was practicable, all the amount of business they would get normally, while not committing them to the predatory practices that were then in force. In other words, it was an act of good will on the part of the carriers concerned as a temporary device to overcome a temporary condition.

Q. And the percentages which the Southern Pacific Company directed to go through the one gateway or the other were varied from time to time by directions from headquarters?

A. As the season would change. It could not send via Ogden at one period of the year the volume that could be sent by Ogden at another period of the year. The same way with respect to El Paso. I have had no opportunity to see anything further than that page before me, and I state now the general bearings as I recall them.

Q. And that practice of directing the percentages to the one gateway or the other on the part of the Southern Pacific Company kept up for a number of years?

A. As I recall it, it kept up for only a limited time.

Q. That was a matter of years, was it not?

A. I think not. My recollection is not clear on that as to how long it lasted. It doubtless continued long enough to serve its purposes, and it was by the desire of all our connections. The same practice was followed by the other initial carriers. It was not of a discriminatory character in any respect except as regards illegality.

Q. The practice kept up surely into the spring of 1903, did it not?

A. It might have done so.

Q. (Showing record to the witness.) In view of what I have just shown you, it would appear so, would it not?

A. It would appear so; and those were arrangements to 380 which the initial carriers and their immediate connections were parties.

Q. If the Central Pacific Railroad were separated and working with the Union Pacific Railroad, they would become active competitors of the Sunset, would they not, as a practical matter?

A. They would.

Q. That would be true of every one of the California terminals would it not?

A. Every terminal that that road reached, and any other terminals with which they could make suitable traffic arrangements, with the existing roads, including the Southern Pacific.

Q. It would be true of Oakland, San Jose, Sacramento, Marysville, and Stockton, would it not?

A. You are speaking now of the same lines about which you asked me immediately before adjournment for luncheon?

Q. I am speaking now not of the part which Mr. Blair suggests in his opinion is the only part which was subject to the Government lien; I am now speaking of all of the Central Pacific Railroad shown in purple on Exhibit 1.

A. If the Central Pacific were separate, it would compete at Sacramento, as you have stated, Marysville, as you have stated, 381 Stockton, Oakland, and San Jose, and would doubtless have some arrangement for reaching San Francisco.

Q. And this competition would be acute?

A. As acute as any other competition.

Q. It would increase the competition over what it is at present?

A. It would be one more road in the competitive field.

Q. And, as a result, would increase the competition over what it is at present?

A. It would increase the competition of the roads competing; it would not increase the service.

Q. And would have the effect of putting the Sunset line into strenuous competition with it?

A. Naturally.

Q. The tendency in increasing the number of competing railroads is eventually to bring about a reduction in rates to the shipper?

A. It would not change the rate, it would not change the bill of lading, and it would not change any condition except to add one more road. It would tend to impair the service rather than to improve it.

Q. Is not the tendency of a number of railroads competing to reach out to the shipper and reach conclusions with him which do result in reductions of rates?

32 A. Not in reduction of rates as a rule; that is the exception.  
Q. Don't you think it has that tendency?

A. It has that tendency, but no more than a tendency, as a rule.  
Q. And the competition in the larger number of railroads is an advantage to the public?

A. That is debatable.

Q. In your opinion.

A. What is the question?

Q. In your opinion—

A. (Interposing.) Would increasing the number of railroads what?  
(The question was repeated by the reporter.)

The WITNESS. If by that you mean the splitting up of existing railroads into smaller ones, on the general principle that an increase in the number of railroad companies is an advantage to the public, I would say no. If the advantage were to any public it would be predominantly to the public of California, which would most be affected, and the public of California strenuously insists that it would be greatly to their disadvantage, and the railroad commission of the

State of California so holds.

33 Mr. McCLENNEN. I ask to have the last part of the answer stricken out; the last two or three clauses.

The WITNESS. I can not eliminate these things from my opinion.

Mr. McCLENNEN. I ask to have the last part of the answer stricken out, which begins "and the public of California strenuously insists that it would be greatly to their disadvantage", on to the end of the answer.

Mr. DUNNE. On what ground do you ask to have it stricken out?

Mr. McCLENNEN. The very obvious ground that it is not at all called for by the question; on the ground that it is a statement of a conclusion and a statement of a matter which is wholly immaterial to this case, matter not within the personal knowledge of the witness, and such other grounds as may seem to the court proper ones for striking out such an answer.

By Mr. McCLENNEN:

Q. In your opinion such competition as would be brought about by the severance of the Central Pacific from the Southern Pacific and operating with the Union Pacific, would be an advantage to the public?

4 A. That is a difficult question to answer, because it involves a good many considerations. The mere separation from the Southern Pacific and addition to the Union Pacific would not be a matter of consequence to the public.

Q. What elements would be required to make that competition advantageous to the public?

A. The service would be rendered as now, the same bills of lading would be issued as now, the same in terms. The tariffs would be handled in the same way as now. There is no particular respect in which the public would be advantaged by it, while the Southern Pacific would be distinctly disadvantaged in the dismemberment of its own system, and the public would be participants in the disadvantages of that dismemberment, in that the Southern Pacific would then have to hook up its lines, to re-create itself a system, and the Union Pacific, in possession of the Central Pacific, would have also to engage in construction in order to give them access to the territory they would require to make a system out of their newly acquired lines, all of which the public would have eventually to pay for.

Q. You have been of opinion at times, have you not, that the competition which I have described in my question would be of advantage to the public?

385 A. I have said at all times that in my opinion the Central Pacific and Southern Pacific should remain as one property, and that when the effort was made to meet the views of the Government by separating them it was only because of our being in a condition of crisis, at which time the United States could have dissolved the merger, at which time we were under the hand of the Government, at the same time to sell the Central Pacific property, and we made at that time the best bargain we could for the sale of the Central Pacific, and we do not conceive that sale to be against the public advantage.

Q. On the contrary, you conceive of it as being to the public advantage?

A. I do not think you will find that my views at that time would bear that construction; that is, there were phases of it in which it might be construed as to the public advantage and other aspects in which it may be against the public advantage.

Q. You were of opinion at that time that the condition which would produce would be to the public advantage, were you not?

A. I do not believe that that was my attitude at that time.

386 Q. Don't you think that at that time you were—

A. (Interposing.) My attitude at that time was that we had pursued that negotiation because of the difficulty under which the company was laboring and in preference to finding ourselves subsequently compelled, perhaps, to put the Central Pacific on the bargain counter, and the Southern Pacific itself being without funds; and if that condition were to ensue it would have been against the public advantage, and it was more to the public advantage that we should yield to the conditions and crisis of the times, and we made the best trade we could, and made it in such a way as to serve the public interests and increase the competition at the same time.

Q. You were of opinion, were you not, that that sale would result in increasing competition, which would be of advantage to the public?

A. If by the mere fact of competition you hold that to be an advantage to the public, that inference would follow; but that was not the general trend of the times.

Q. You personally were of that opinion at that time, were you not?

A. That competition—

Q. (Interposing.) Was to the public advantage?

A. Generally speaking, that competition is to the public advantage.

Q. And that the competition which would be made by that arrangement would be to the advantage of the public?

A. The atmosphere at that time and the trend of the commissioners' views at that time was that the trade that was being made was in some way collusive and that it was not a bona fide separation of properties, and they were examining me as to what the effect of a separation would be; and I pointed out to them what the effect would be, and whatever I said in that respect is true; that is, where there is now but one road there might in some points be two. On the other hand, there are many places which now have the advantage of a service via Ogden and via El Paso, which would then be cut off from that facility. To-day Stockton, for example, is on the lines east and west bound, north and south bound, but in the event of the separation the Central Pacific would have a monopoly of Stockton, one of the terminals; and there is a variety of local conditions there, all of which would have to be gone into in some detail to determine the question of the benefit of that competition.

What I was going into at that time, however, was not so much the benefit of competition; I was going into the bona fides of the transaction.

Q. But at the time you were of opinion that, viewed as a whole, the competition which would be made by that severance of the Central from the Southern and its operation with the Union would be an advantage and not a disadvantage to the public?

A. I do not think that I dwelt upon the question of advantage. I do not think that it would not be to the disadvantage of the public, and I do not conceive now that it would be to the disadvantage of the public, except to the extent that the separation of the Central

Pacific from the Southern Pacific properties would leave the Southern Pacific properties dismembered; they would have to spend money in building lines, and so would the Union Pacific, in the endeavor to re-create the public service by means of two systems in California, where now it is served by one system; but that that would

be of advantage to the public is an affirmative part of the question which might be debated. The public would have to stand the additional charges, of course. The public would have to stand the incidental disadvantages. But whether the sum total of that would be an advantage to the public as a whole was then, and still remains, a legitimate question for differences of opinion.

Q. What I ask of you is whether you were not of opinion, within that range, if any, of difference of opinion, that that particular increase of competition would be, on the whole, of advantage to the public.

A. No; my position in the question was that if it were left to my own judgment, I would not do it.

Q. You expressed, did you not, to the commission the view that that arrangement would bring a competition which, even with 390 such disadvantages as it might bring, would be of advantage on the whole, to the public?

A. I said it would increase the competition. I said that by the time we had whooped up our railroads and completed our new construction and made the necessary traffic alliances, that when that time came our competitors would find that we still had a pretty good railroad, notwithstanding our loss of the Central Pacific.

Q. And you supplemented that by saying that that competition would be an advantage to the public?

A. To the extent that competition may be an advantage to the public.

Q. And, of course, it is needless to say that the views that you express were precisely your views?

A. If you will project my views into the atmosphere of that time, yes.

Q. You were of opinion that the Southern Pacific might, notwithstanding the loss of the Central, still expect to get a greater percentage of the revenue, because it would be in a position to bargain with other railroads and get more than a mileage pro rate on the interstate business which it carried?

A. I think that is true only with respect to the business interchanged between the Central Pacific and the Southern Pacific. Under unified ownership as it exists the business is handled as the business of one system, and always has been; and it is, generally speaking, on a basis of mileage; but if the systems were separated, if the system was divided into two parts, for example, there would no longer be a reason for interchange of business on that basis. It is not usual and would not be proper. In fact, it was stipulated that that question was to go to arbitration, in the agreement between the Union Pacific and the Central and the Southern

Pacific at that time, which failed because of the action of the Colorado Railroad Commission.

Q. You were also of opinion that this separation of the Central from the Southern would leave the Southern in a better position to compete with the water lines around the Horn and over Tehuantepec and over Panama?

A. Yes. We were speculating at that time on what we would do against the Panama Canal. That speculative condition, however, has changed into a condition of reality now, for the canal is open; and we find that things we hoped we might do it is utterly impossible to do.

Q. By the way, that leads me to ask you: Is there any other regular line running from California to Panama except the Pacific Mail Steamship Company?

A. You mean to Panama or through the canal? The Pacific Mail only runs to Panama. It can not go through the canal under the law. Would you like me to tell you the lines that are going through the canal?

Q. Yes.

A. The American-Hawaiian Steamship Company, the Luckenbach Line, and Grace & Company.

Mr. BLAIR. The Luckenbach Line was running to Panama prior to the opening of the canal, was it not?

The WITNESS. Yes; and so were Grace & Company, and so was the Cosmos Line, before the German war broke out; and there are other companies figuring in that trade also. In fact, I think, at the present time, there is a considerable number that had figured on going through the canal that will not go through on account of the war, but that is a temporary condition. Competition by the canal is so active that it has made it hopeless for any railroad line to expect to take any business of consequence away from the water routes.

Mr. BLAIR. Does that apply to a mixed rail-and-water line like the Sunset?

The WITNESS. The mixed rail-and-water line by the Sunset include with the rail lines.

By Mr. McCLENNEN:

Q. Is this a fair statement of the policy of the Southern Pacific Company with reference to California territory north of Tehachapi prior to 1901, namely:

"The agents of the Southern Pacific Company solicited—at least those were their instructions—all freight; first, via the Sunset-Gulf route if it could be handled that way; secondly, if the territory was far enough east, via New Orleans, in connection with either the Illinois Central or the Queen & Crescent and for a while the Louisville

& Nashville. The next favored route was via El Paso on those commodities which were not perishable, in connection with the Texas Pacific, and we had some preferred routing with the Missouri, Kansas & Texas"?

A. That is, from south of Tehachapi?

Q. North of Tehachapi.

A. That is only with respect to the El Paso route. You have read the instructions with respect to the Ogden route.

394 Q. This is correct as far as it goes, is it?

A. That I take to be a mere segregation of whatever part of the business would go by El Paso, is it not?

Q. No; this statement is a general statement of the conditions.

A. There could not be a general statement that would omit the Ogden route.

Q. Well, the routes named in that statement were, prior to 1895, preferred over the Ogden in the Southern Pacific Company's stations, were they not?

A. I should say not.

Q. Was not this order of preference, contained in the statement that I have given to you, ahead of the Ogden route? That is, not the effort to get these routes which I have mentioned, and the Ogden route only if these could not be placed?

A. By reading a fragmentary document of that kind, I can subscribe to that statement.

Q. I show you the whole, so that you may have the context as [exhibiting book to the witness].

A. It reads here, you see [reading]:

395 "A. Now, I will have to confine myself, Mr. Chairman, to the conditions north of Tehachapi.

Q. The conditions which you know, Mr. Sanborn.

A. Because I was only at Mojave station, which was a job agency with the Santa Fe in those days, about nine months, and a short time at Santa Barbara, a very short time at Santa Barbara, the rest of my work was all in northern California."

I do not know who this is that is giving this testimony, but a routing instruction that omit the Ogden route would not reflect the attitude of the company at that or any other time.

Mr. HERRIN. That was Mr. Sanborn.

The WITNESS. Yes; somebody by the name of Sanborn.

By Mr. McCLENNEN:

Q. Do you know who Mr. Sanborn is?

A. The name is not here.

Q. It is shown in the index.

A. Yes; H. H. Sanborn. I think that is the Mr. Sanborn who is connected with the California Commission.

Mr. HERRIN. He is the rate expert of the California Commission, and was formerly with the Southern Pacific.

The WITNESS. He was formerly with the Southern Pacific.

By Mr. McCLENNEN:

Q. He was formerly freight solicitor in the employ of the Southern Pacific Company?

A. I do not know, but I think that is the man. You will recollect, of course, that I am not cognizant of that testimony; was not with the company at that time, and do not know what this man was doing at that time; but I take it it is the same man.

Q. Have you any knowledge of the various agreements of the railroads composing the Transcontinental Association relative to the division of business or the method of conducting relations with each other?

A. Yes; I did have, when I was freight traffic manager, a good deal to do with it.

Q. Did you know of this agreement, Exhibit 18, of September 28, 1883 [exhibiting book to the witness]?

A. I had some knowledge of it, yes; but that was in the early days of my service with the company. I entered the company's service in 1882.

Q. Did you know of this supplemental agreement, Exhibit 19, of November 8, 1883?

A. I knew of it in a general way, simply as a clerk in the office.

Q. Did you know of this agreement of October 1, 1889, Exhibit 21, between the roads composing the Transcontinental Association? (Note.—"1872" with reference to this exhibit, occurring on page 21 of the record, should be "1889".)

A. I recall that somewhat remotely. It was an agreement with which I had nothing to do at that time.

Q. Do you happen to remember the period when James Smith was chairman of the Transcontinental Association?

A. He was chairman for a very short time, as I recall it, in the early eighties. As I recall it, it was only for a brief period.

Q. He may have been as late as 1889, may he not?

A. I could not tell you.

Q. Do you know whether or not the Southern Pacific's copy of the three contracts that I have shown you is still in existence?

A. I do not know. If they were filed in San Francisco, they are burned; that is, everything that we had in San Francisco during

398 the great fire of 1906 was destroyed. The building itself was destroyed, and all the vaults in it proved not to be fireproof, as we had supposed they were.

Q. In the ordinary course that would have been either in the company's office in New York or else in San Francisco?

A. Yes; in one place or the other. They may have been destroyed in the Equitable fire here, possibly. We were unfortunate in both our headquarters being burned out.

Q. That is, it is probable that if they were not burned in San Francisco they were destroyed in the Equitable fire in New York?

A. Yes; it is possible that they were destroyed in the Equitable fire in New York.

Q. In administering these properties, as president of the Southern Pacific Company you have done it with a consciousness, have you not, of the probability that the holding of the Central Pacific by the Southern Pacific was contrary to the Sherman Act?

A. No, sir; I do not regard it as probable.

Q. You have been so advised by able counsel of your own selection, have you not?

A. I am not so advised.

Q. Were you not so advised by Mr. John G. Johnson, of Philadelphia?

399 A. I was not present at that conference, as I testified; and I testified as to what I thought, and I was afterwards told that I erred. My testimony was in error in that particular.

Q. That is, in some thus far inscrutable way you got the impression that John G. Johnson had advised that the holding of the Central by the Southern was contrary to the Sherman Act?

A. I was told that at the conference with Mr. Johnson he had stated that the Southern Pacific under its Kentucky charter could not buy its own stock, even for the purpose of retiring it; and as to the rest of what he discussed I find my inferences were mere hearsay and erroneous.

Q. But you did get the impression which you now say was erroneous?

A. Whatever I testified to.

Q. That he had advised that it was contrary to the Sherman Act.

A. Whatever I testified to.

Q. You testified to that in substance, did you not? You testified to this effect, did you not?

400 "Q. Now, with respect to the position of the Attorney General, did the Southern Pacific directors or executive committee take the opinion of outside counsel on any of these questions?

"A. They called in as an independent counsel Mr. Johnson; I forgot his initials.

"Q. Johnson, of Philadelphia?

"A. Johnson, of Philadelphia.

"Mr. McCUTCHEON. John G. Johnson?

"A. John G. Johnson, of Philadelphia, and submitted the matter to him.

"Mr. HERRIN. They submitted first the question as to whether the Southern Pacific could take its own stock?

"A. First whether it could take its own stock, and his opinion confirmed the opinion of our Kentucky counsel, Judge Humphrey, that we could not take our own stock, directly or indirectly. The second point upon which he was asked to advise the executive committee was whether there was reasonable ground for the Attorney General's position, and as to what would be the probable result of action by the Government as outlined by the Attorney General, and his conclusion was that it was improbable that the Southern Pacific could retain the

Central Pacific.

"Q. He thought there was enough question about it to justify our going on with this trade?"

"A. That is what I testified to.

"Q. Of course you so understood at that time?

"A. I so understood at that time. It was all in view of this trading. That was my understanding, as I said. I was afterwards informed that I was mistaken about it.

"Mr. HERRIN. You have since been informed that you were in error in a part of it?

"The WITNESS. As to the latter part.

"Mr. McCLENNEN. I think that is all.

"Cross-examination by Mr. HERRIN:

"Q. This routing of citrus fruit to which your attention has been called has no reference to any competition between the Sunset and the Central routes, has it?

"A. None whatever; climatic conditions and distribution are the governing quantities.

"Q. You were asked about the Southern Pacific controlling the rate, and I think your answers set forth your views upon that subject; but I would like to ask you if at any time the Southern Pacific was ever in a position to absolutely dominate the rate or the division of rates between the connecting companies, the Union Pacific, or any connecting company?

"A. No one company can dominate the rate or even the divisions of the rate.

Q. Do you know anything about the arrangement of division of those rates as between the Central Pacific and the Union Pacific and connecting lines which was made at the opening or at the beginning of the Central route, as to whether or not the Southern Pacific made that division what it wanted it or not?

403 A. Mainly those divisions that were made at that time continue in effect.

Q. They continue in effect?

A. To this day. They never have been satisfactory to the Central Pacific in the beginning or to the Southern Pacific since, where based on mileage pro rata with the Union Pacific. I did not have anything to do, of course, with the original fixing of them, but I do know that from time to time there have been discussions about them, and before I took hold they were the subject of discontent, and afterwards, too.

Q. You know that the company was not satisfied at that time since?

A. The company contended for higher divisions.

Q. Because of the mountainous grades which were surmounted by the Central Pacific as against the more liberal grades of the eastern roads?

A. They had to climb the Sierra Nevadas. There is another consideration, also. We had all the terminal expenses, whereas the

Union Pacific was for most of the business in the nature of a bridge on business originating east of them or being destined to points

404 east of them, so that they were merely a road in transit. The

expensive terminals we had to maintain.

Q. You were asked about the diversion of business from the Denver & Rio Grande after the merger. Was that not in part produced by the superior service of the Union Pacific? Was not the Union Pacific largely improved shortly after that merger by the straightening of its lines and the reduction of grades?

A. During the merger the Union Pacific was improved, and so was the Central Pacific. The Union Pacific was then put in as first class condition as it is to-day and did draw business from its competitors undoubtedly.

Q. That was a factor, was it not?

A. That was a factor.

Q. Now, was not the Sunset line also improved after the merger and during the merger?

A. All the Southern Pacific lines were improved by all roads. Mr. Harriman's general policy was a policy of improvement.

Q. It covered all these lines?

A. All these lines.

103 Q. You do not recall any discrimination in favor of any one as against the other?

A. No; our Sunset line was improved also, and our Shasta line was improved, likewise. The Southern Pacific lines in California were improved.

Mr. HERRIN. That is all.

Redirect examination by Mr. McCLENNEN:

Q. The mileage which determined the pro rate between the Central and the Union was the original mileage?

A. Yes.

Q. There has never been any change in the pro rate on the shortening of the lines?

A. On the shortening of either line.

Q. On the shortening of either line; you simply took the old gauge?

A. Yes; it has been regarded as a subject that belongs to the past.

Q. The highest elevation between San Francisco and Omaha on the rails is on the rails of the Union Pacific?

A. It is not a question of elevation; it is a question of grade.

Q. I am afraid you are a little argumentative. I would like to know whether that is not the fact?

A. My recollection is that it is.

Q. Somewhere about Sherman is the highest point?

A. Yes.

Recross-examination by Mr. HERRIN:

Q. Referring to the grade, you start at Sacramento practically at sea level, do you not?

A. Sacramento practically at sea level.

Q. And elevate yourself right up to the top of the Sierras in 100 miles?

A. Yes; over 7,000 feet.

Q. And then you descend on the other side of the Sierras to the plateau of the Nevada and Salt Lake Basin, which is 4,000 feet elevation?

A. Yes.

Q. And then you have only to lift yourself from that 4,200 feet to 3,000 feet over the Rockies, with a very long, gradual, easy grade down to Omaha?

A. Yes; easy grades and long tangents.

(Whereupon an adjournment was taken until to-morrow, Friday, November 24, 1914, at 10.30 o'clock a. m.)

ROOM 720, CUSTOM HOUSE,

New York City, September 25, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClellan and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.

Mr. McCLENNEN. Please note on the record that in conformity with the testimony of Mr. Sproule, on page 210, the red lines on the map of petitioner's Exhibit No. 1, running from Grants Pass in southwestern Oregon, toward the coast have been erased, and that the red line from Fernlee, in the western part of Nevada, to and through Susanville in the eastern part of California, which was shown on petitioner's Exhibit No. 1 in red, has, in accordance with the same page of Mr. Sproule's testimony, been changed to purple.

408 HENRY RUHLANDER was called as a witness on behalf of the petitioner, and, being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. Your residence?

A. New York City.

Q. Your address?

A. 15 East Forty-eighth Street.

Q. You are connected with the firm of Speyer &amp; Company?

A. A member of that firm.

Q. Exhibit B of defendants' answer in this case sets out a plan of readjustment contemplating, among other things, the deposit of securities with Speyer &amp; Company in the matter of the Central Pacific Railroad Company. Have you with you the record of Speyer &amp; Company, showing the stock certificates in the Central Pacific Railroad Company which were deposited in 1899 with Speyer &amp; Company?

A. Yes.

Q. Is this book the record?

A. Yes, sir; that is the record.

409 Q. Let me see if I properly understand the meaning of

This first column indicates the date on which the deposit was made?

A. Correct.

Q. The next column entitled "Depositor and address", indicates the name of the depositor and his address?

A. That is right.

Q. The next column headed "Number of shares deposited" indicates the number of shares which that depositor deposited?

A. Yes.

Q. And the next column, "Dates and number of the certificates", indicates the number of the certificate and the date which the certificate bore?

A. Correct.

Q. The next column headed "Date of deposit with Central Trust Company" indicates the date on which Speyer & Company redeposited the particular certificates with the Central Trust Company?

A. Yes.

Q. What is the significance of the entries on the right hand page against the entries under the columns which I have read?

410 A. There were certificates deposited, issued to the depositors, for the Central Pacific stock deposited under this plan. Those are the numbers of the certificates of deposit issued. The second note indicates the date on which the assessment of two dollars per share was paid. This marginal note does not mean anything; it is merely the checking of the record by the clerk.

Q. Then the information given by the book, if we read the line across, is the date of deposit, the name of depositor, his address, number of shares deposited, number on the certificate, date on the certificate, date of redeposit, number on Speyer & Company's certificate of deposit issued to the depositor, and the notation of assessment paid or not?

A. That is correct.

Q. This description that you have given seems to cover the consecutive written pages; then it appears that your book has a large number of blank pages. Then I find new entries starting. Can you tell me in general what that means?

411 A. I can tell you in a general way that after this was completed, these additional shares came in, after it was looked upon as if it had been completed; and, so far as I can recall—you see, this is a long time ago, fifteen years ago—it shows additional deposits after that came in, from various sources.

Q. So that the entries on these isolated dates that I find here are of the same character as the others?

A. Absolutely.

Q. Following that page which you have just described there is another series of blank pages and then a page which has some entries. Can you tell us what those entries are, trifling in amount?

A. I can not give you an actual description, but I imagine—this is only a guess on my part, because, as I say, it is fifteen years ago—those are people who thought they would take the original stock,

take stock—you see, under the plan, people had the right to take what is known as "nonassenting"; they did not care to sell their stock to the Central Pacific. They had such a right, my recollection is, and some of them, after they had exercised that right to keep the Central Pacific stock, changed their minds, but I do not want to make that as a positive statement, because it is too long ago to remember.

412 Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 29 the record book just referred to in the examination of the witness.

(The record book referred to was thereupon marked "Petitioner's Exhibit No. 29, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It is agreed that this Exhibit No. 29, after being copied by the examiner, is to be returned to the witness and the copy used in lieu thereof.

You may cross-examine, gentlemen.

Mr. BLAIR. We have no questions.

OSCAR L. COLES was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Oscar L. Coles.

Q. And your residence?

A. Bayside, Long Island.

Q. And your address in New York City?

413 A. 54 Wall Street, the Central Trust Company.

Q. You are connected with the Central Trust Company?

A. I am.

Q. In what capacity?

A. As transfer clerk in the reorganization department.

Q. It has appeared from the testimony just given by Mr. Rosander that stock certificates in the Central Pacific Railroad Company, deposited with Speyer & Company, were perhaps wholly or at least to some extent redeposited with the Central Trust Company. Have you here the record of the certificates that were deposited with the Central Trust Company?

A. No.

Q. What record did you keep with reference to that transaction?

A. We kept them in a lump sum only, as they came to us.

Q. Have you a record of the total of the deposits of the Central Pacific Railroad Company certificates?

A. I think we have.

Q. Is that here?

A. No. This does not represent the actual stock that come to us in bulk. This represents the certificate of deposit issued by Speyer for that stock.

Q. By "this" you mean the book now before you?

A. The book now before me, yes.

Q. The numbers on your record, then, refer to the numbers not on the certificates of stock of the Central Pacific Railroad Company, but the numbers on the certificates of deposit issued by Speyer & Company?

A. That is correct.

Q. Will this record enable you to state the total number of shares presented by those certificates of deposit which were presented to the Central Trust Company?

A. This record shows the amount of Southern Pacific delivered against certificates of deposit issued by Speyer & Company in New York City.

Mr. BLAIR. Southern Pacific stock, you mean?

The WITNESS. Southern Pacific stock against Speyer's receipts.

By Mr. McCLENNEN:

Q. That is, the amount of Southern Pacific stock issued through the Central Trust Company in return for the certificates of deposit of Speyer & Company for Central Pacific Railroad Company shares.

A. Yes.

Q. Does the record show the total number of shares of Southern Pacific Company stock that were so issued?

A. It does.

Q. And what is the total?

A. 370,154 shares.

Mr. DUNNE. You mean of Southern Pacific stock?

The WITNESS. Yes; to these various parties.

By Mr. McCLENNEN:

Q. Then am I right, inferentially, that this figure 370,154 indicates the number of Speyer & Company's certificates of deposit for shares in the Central Pacific Railroad Company which were presented to the Central Trust Company, against which the Central Trust Company issued certificates for shares in the Southern Pacific Company, was 370,154?

A. That is correct.

Q. Did the Central Trust Company have anything to do with any of the deposits of Central Pacific Railroad Company stock or the issue of Southern Pacific Company stock against it, except that

which passed through Speyer & Company as indicated and as represented by this figure 370,154 shares?

416 A. Not as far as I know. I will verify that, as there are some entries here where stuff was sent abroad that was delivered to various parties in New York.

Q. Am I correct that, in addition to the 370,154 shares represented previously by certificates of deposit of Speyer & Company in New York, you have on your book a memorandum indicating that Speyer Brothers in London had issued certificates of deposit additional to the ones above mentioned, against which there was issued by some one 219,941 shares of Southern Pacific Company's stock?

A. I think so.

Q. In the same way, have you a memorandum on your books indicating that there was issued, additional to the above two totals 79,910 shares of Southern Pacific Company's stock against certificates of deposit for Central Pacific Railroad Company stock which had been deposited with Teixeira de Mattos Brothers?

A. Yes.

Q. Just for convenience, it is true, is it not, that 370,154 plus 219,941 plus 79,910—the three figures which you have mentioned—amount to 670,005?

A. They seem to.

417 Q. The dates on your book indicate, do they not, that you began to receive the certificates of deposit of Speyer & Company, the New York concern, October 9, 1899?

A. That is correct.

Q. And that, up to January 1, 1900, the certificates so received were representative of 362,058 shares?

A. Yes.

Q. And that by January 1, 1901, the deposit had increased to figure to 368,573 shares?

A. That is correct.

Q. And that by January 1, 1902, that figure had increased to 369,711 shares?

A. Yes.

Q. And that there were scattering receipts thereafter up to February 29, 1912, the deposit on that date completing the above-given total of 370,154?

A. Yes.

418 Q. It appears from your record that the 219,941 shares represented by Speyer Brothers' London certificates, with the exception of 80 shares, were received by the Central Trust Company February 26, 1900?

A. Yes.

Q. The same record indicates that the certificates of deposit of Teixeira de Mattos Brothers, representative of 79,910 shares, were, with a scattering few exceptions, received by the Central Trust Company December 7, 1899?

A. Yes.

Q. And the indications from your record are that the 79,910 shares represented by the certificates of deposit issued by Teixeira de Mattos Brothers were covered by 7,991 ten-share certificates?

A. To the best of my knowledge.

Q. The certificates of deposit of Speyer Brothers, of London, consisted of a large number of different groups of certificates, each group itself being consecutive in numbering, and each certificate being ten shares; is that right?

A. I think so. Well, they could not all be for ten shares, because 861 could not come out in multiples of ten; but ten, I think, is the largest certificate in that group, and there are a few what we call blank lots, odd amounts.

Q. The certificates of deposit of Speyer & Company, of New York are very numerous?

A. Yes.

Cross-examination by Mr. BLAIR:

Q. In reference to the certificates which you refer to as Speyer & Company's New York certificates, there appear in your record various names representing the certificate holders?

A. Yes.

Q. And many of those names for large amounts you recognize as names of prominent bankers in New York?

A. Yes.

Q. And in reference to the certificates which you have referred to as certificates issued by Speyer Brothers in London, it appears from your record that Speyer Brothers were also the holders of all the certificates presented?

A. Yes.

Q. Does this statement in the second column as to the certificate holder afford any proof as to who was the actual owner of the stock represented by the certificate?

A. I should think not. It might represent the owner. The certificates were issued in bearer form.

Q. Do you know whether or not it was customary at that time for owners to have their stock represented by bankers or brokers or other agents?

A. Well, I should suppose that. So far as I know, this would represent the holders of the certificates.

Q. And it did not necessarily represent the owners of the certificates or the stock represented by the certificates?

A. No.

Redirect examination by Mr. McCLENNEN:

Q. To make that a little more specific, if an imaginary person John Brown, held one of these certificates of deposit and took it in to N. W. Harris & Company, of Boston, with instructions to exchange it for the new Southern Pacific Company stock, and N. W. Harris & Company sent it forward to you, the only name that you would have would be N. W. Harris & Company? Your records would not show John Brown at all?

421 A. According to the instructions of the latter, it would depend entirely.

Q. The certificates of deposit on their face were all bearer certificates?

A. As I remember, yes.

Q. So that they bore no evidence on their face, when they came to you, of who the owner was?

A. No.

Q. The only information you would have would be what was communicated to you by the depositor?

A. Yes.

Q. And the new stock was issued in the name of the person presenting the certificate, or as he might, by letter or otherwise, direct when he deposited the certificate?

A. Yes; according to this record.

Q. The names in the case of the New York Speyer & Company certificates of deposit are very numerous?

A. Yes.

Q. In the case of Speyer Brothers, of London, the new certificates were all issued in that name?

A. That I do not know. I am not sure that we issued that stock.

Q. And would your last answer apply equally to the German stock?

A. Yes.

Mr. McCLENNEN. That is all.

422 ANGUS D. McDONALD was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. Angus D. McDonald.

Q. Your residence?

A. Montclair, New Jersey.

Q. And your business address?

A. 165 Broadway, New York City.

Q. What is your relation to the Southern Pacific Company?

A. I am the comptroller of the company.

Q. Do you bear any relation to the Southern Pacific Railroad Company?

A. I think I am also comptroller of that company.

Q. And the same with reference to the Central Pacific Railway Company?

A. Yes, sir.

Q. And the same with reference to the Central Pacific Railroad Company?

A. No, sir.

Q. Have you any relation to the Central Pacific Railroad Company?

A. Not that I recall; no, sir.

Q. You have been comptroller of all these three companies the same length of time, have you?

A. No, sir.

Q. Then, will you state the period as to each company?

A. I was appointed comptroller of the Southern Pacific Company April 1, 1913. I do not recall the exact date of the appointments in the case of the other companies; some time during the year 1913.

Q. What, in general, are your duties as comptroller?

A. I have general charge and supervision of the accounting and treasury departments, under the direction of the chairman of the executive committee.

Q. What, if any, class of books, accounts, and papers do you have custody of?

A. I have immediate charge of the accounts in New York City, which include the journals, cash books, records of equipment purchased in New York, and detailed records that are connected therewith.

Q. Does that cover all?

Q. A. No. I omitted the record of vouchers covering payments made through the New York office.

Q. Does this have reference to all three of the companies?

A. No, sir; only the Southern Pacific Company.

Q. What do you have custody of, so far as the Southern Pacific Railroad Company and the Central Pacific Railway Company are concerned?

A. I have no records of those companies under my immediate charge.

Q. How long have you been associated in any way with any of these companies?

A. I entered the service of the Southern Pacific—

Q. (Interposing.) That is, the Southern Pacific Company?

A. The Southern Pacific lines, I would say, in 1901.

Q. In what capacity?

A. As a clerk of the G. H. & S. A. Railway in Texas.

Q. You remained in that position how long?

A. Until December, 1904.

Q. Were you located in Texas during that period?

A. Houston, Texas.

425 Q. From 1904 where were you, and in what capacity?

A. January 1, 1905, I was appointed chief clerk of the accounting office of the Southern Pacific Company at San Francisco. I remained in that position until December, 1907, when I was appointed auditor of the Los Angeles Pacific Company, which is an electric line at Los Angeles, controlled by the Southern Pacific Company.

I remained in that position until December, 1908, when I was appointed auditor of the Pacific Electric Railway Company, also an electric line at Los Angeles, owned by the Southern Pacific Company—that is, now owned by the Southern Pacific Company.

On January 1, 1910, I was appointed auditor of the Southern Pacific Company at San Francisco. I remained in that position until February 1, 1913, when I was appointed deputy comptroller of the company, with headquarters in New York. I remained in the position of deputy comptroller for a period of two months. I was then appointed comptroller April 1, 1913.

Q. Have you stated where you were located between 1907 and 1910?

A. At Los Angeles.

426 Q. You were in San Francisco at the time of the 1906 fire?

A. Yes, sir.

Q. Do you know, from your connection with the offices of the various companies, what class of records of these various companies were kept in San Francisco? I now refer to the Southern Pacific Company, the Southern Pacific Railroad Company, the Central Pacific Railway Company, and the Central Pacific Railroad Company.

A. You refer to the period during which I was located at San Francisco?

Q. Yes.

A. I am familiar with the records.

Q. I want to get the best information I can from you as to the kinds of records of these four companies that were in San Francisco and so, presumably, destroyed by the fire, as distinct from records which were kept elsewhere.

A. The records of the Southern Pacific Railroad Company and the Central Pacific Railway Company—that is, the general books of the company—have always been kept in San Francisco, to the best of my knowledge.

427 Q. And that undoubtedly applies also to the books of the Central Pacific Railroad Company, I suppose?

A. I do not know. That company was operating prior to the time that I came to the company.

The records of the Southern Pacific Company, located in San Francisco, were merely what we call operating records; the general books of the company are kept in New York City.

Q. The books of the other two companies—that is, the Southern Pacific Railroad Company and the Central Pacific Railway Company—which were kept in San Francisco, would also include the corporate records of those two concerns?

A. Yes, sir.

Q. Where were the formal contracts of these various companies kept?

A. During what time?

Q. At the time of the fire in San Francisco.

A. Almost all of them were located in the accounting department at that time.

Q. As the papers of the companies were kept, is it probable that the agreements connected with the Transcontinental Association, so far as the Southern Pacific Railroad Company was a party to them, or the Southern Pacific Company was a party to them, were in the San Francisco fire?

428 A. I do not know as to that.

Q. You have no knowledge of the probabilities, one way or the other, as to that?

A. It has always been the practice for the traffic department to keep whatever traffic contracts are made. They never have been filed in the accounting department.

Q. Where was the headquarters of the traffic department of the Southern Pacific Company in 1906?

A. Mr. Stubbs, who was the director of traffic at that time, was located in Chicago.

Q. Did his office in Chicago extend up to 1906?

A. I think the office remained in Chicago until some time during 1911, when it was transferred to New York.

Q. What officer of the Southern Pacific Company at the present time would, in the ordinary course of business, have custody of such agreements, if they are still in existence?

A. What do you mean by "such agreements"?

Q. I refer to an Exhibit 18 and Exhibit 19, which were agreements of 1883 between the Southern Pacific Railroad Company and various other railroads, for the formation and operation of the Transcontinental Association; Exhibit 24, an agreement of 429 October 1, 1889, between the Transcontinental Association and the Pacific Mail Steamship Company; Exhibit 25, an agreement of December 16, 1895, between the Panama Railroad Company and the Pacific Mail Steamship Company; Exhibits 26 and 27, agreements of June 11, 1902, between the Panama Railroad Company and the Pacific Mail Steamship Company.

A. As I stated before, agreements covering traffic arrangements are generally kept by the traffic department. I could not say whether they were kept in the office of the traffic manager, the general freight agent, or the director of traffic.

Q. Who are the gentlemen who hold those respective offices at the present time?

A. Mr. L. J. Spence is director of traffic; Mr. G. W. Luce is freight traffic manager of the Southern Pacific Company; Mr. Thomas G. ham is assistant traffic manager.

Q. And their respective offices are where?

A. Mr. Spence is located in New York City, and the other two gentlemen named are located in San Francisco.

Q. Were you in New York at the time of the Equitable Building fire?

A. I was not.

430 Q. Do you know what classes of books and papers of any of these four companies were kept in the Equitable Building at that time?

A. I think the methods in effect at that time were the same as they are today; that is, the general books of the Southern Pacific Company are located in New York City. The general books of the Southern Pacific Railroad Company and the Central Pacific Railway Company were kept in San Francisco.

Q. Am I right in understanding that in one or the other of the fires the records of the company that would make it possible to give exact statements as to the volume of freight moving through different gateways, and the revenue therefrom, were destroyed?

A. Such records we kept in San Francisco, and they were destroyed in the fire of 1906.

Q. Were the minute books of the stockholders and directors meetings of the Southern Pacific Company kept in San Francisco at the time of the fire, or in New York, or elsewhere?

A. I am not a competent witness as to that point, but I think they were kept in New York City.

431 Q. The same question with reference to such record books of the other three companies, the Southern Pacific Railroad Company, the Central Pacific Railroad Company, and the Central Pacific Railway Company?

A. I think those records have always been kept in San Francisco.

Q. So that the probability is that all of those records prior to 1906 are destroyed?

A. Yes, sir.

Q. Have you any information with reference to the records of any of these four companies showing the stockholders therein from time to time?

A. That is outside of my jurisdiction. I know nothing whatever of records of stockholders.

Q. You do not know where they were kept for any of these companies?

A. I will qualify that in this way: That the present records of the stockholders are kept in the transfer office. The transfer office is now a part of our treasury department, and the treasury department is under my jurisdiction. So I therefore have indirect control over the records showing the present stockholders of the company.

432 Q. How far back do the records within your control shed any light upon who were the stockholders in any one of these four companies?

A. I do not know as to that. I could not answer without examining the records.

Q. Have you got the transfer books, stock ledgers, or certificate books of the Southern Pacific Company for any period back of 1900 in your possession?

A. I do not think so. My understanding is that practically all of the records of the New York office were lost or impaired in the Equitable fire.

Q. Have you any knowledge or any means of arriving accurately at the names and amounts of holdings of stock in the Southern Pacific Company prior to 1900?

A. I do not know of any way of arriving at it.

Q. Is the same true of the Central Pacific Railroad Company and the Southern Pacific Railroad Company?

A. That is, for the period prior to 1900?

Q. For the period prior to 1900.

A. As to the Southern Pacific Railroad Company, I do not know of any records in existence that will show the stockholders prior to 1900. The same is true of the Central Pacific Railroad Company.

433 Q. And is the same true of the Central Pacific Railroad Company?

A. Yes, sir.

Q. I think perhaps your answer covers it, but I will make an inquiry. Have these records, as to any of these companies, for the period prior to 1900, been duplicated to any extent from any source, so that there would be means of getting the information from such duplicates?

A. I could not answer as to that. The organization was changed somewhat in 1913. Prior to that date the transfer office was a part of the secretary's office; that is, the transfer office of the Southern Pacific Company. In 1913 it was made a part of the treasury department, and therefore came under my indirect control. The secretary's records, stock books of the Southern Pacific Railroad and Central Pacific have never been transferred to the transfer office. They still remain under the control of the secretaries of the respective companies.

434 Q. And any such duplicates, if they existed as to the Southern Pacific Railroad Company and the Central Pacific Railroad Company, would under this arrangement be in the possession of the secretaries of those companies in San Francisco?

A. That is my understanding.

Q. And were so at the time of the fire?

A. Yes.

ARTHUR A. TOPPING was called as a witness on behalf of the petitioner, and, being first duly sworn, testified as follows:

Direct examination by Mr. GANN:

Q. What is your residence?

A. Washington, D. C.

Q. And your occupation is what?

A. Clerk in the division of tariffs of the Interstate Commerce Commission.

Q. How long have you been connected with the commission in the division of tariffs?

A. Seven years.

Q. And what positions have you held in that time, generally speaking?

435 A. I was a clerk all the time.

Q. You are a clerk in the office?

A. Yes.

Q. And have you brought with you from the division of tariffs Washington statements of various rates which were requested by counsel for the Government to be prepared by the division of tariffs?

A. Yes.

Q. I call your attention to a statement showing the rates on various commodities from New York City to California terminals via water and rail by Gulf route, as compared with rates by other routes, and ask you if that statement was prepared in the division of tariffs of the Interstate Commerce Commission?

A. It was; yes.

Q. Was it prepared under your supervision?

A. Yes.

Q. And you have knowledge of the tariffs from which it was prepared?

A. Yes.

Q. Does that statement show in detail a number of commodities shipped in carload lots?

430 A. Yes.

Q. Does the statement show the dates on which various tariffs were effective, beginning in 1888 and down to the present time?

A. Continuing up to May 27, 1914, the date these statements were compiled.

Q. The statement shows the rate in cents per hundred pounds except as specifically designated otherwise?

A. Yes.

Q. It also shows the comparison between the rates effective by way of the Morgan Line, the Sunset Route, and the Southern Pacific Company, as compared with other all-rail routes, does it?

A. Yes.

Q. Beginning with the first date of the tariff, effective September 1st, 1888, have you made a computation as to the number of items shown in that tariff where the rates applicable over the Morgan Line and Sunset-Gulf Route, generally speaking, were lower than those rates applicable by way of the all-rail route? Have you made such a computation?

A. Yes.

437 Q. Have you the number of rates effective by the Morgan Line, which are lower than the all-rail route?

A. On that date they were the same.

Q. That is, there were no rates in effect on the Morgan Line which were lower than the all-rail route?

A. Not on that date.

Q. Take the next date, May 10, 1893, have you made a computation as to that?

A. Yes, sir.

Q. What was the number of commodities where the rate by the Morgan Line was lower than the all-rail rates?

A. Sixty-six commodities.

Q. The next date, June 24, 1897, have you made a computation as to that?

A. Yes.

Q. What is the number of commodities where the rates over the Morgan Line are less than by the other lines?

A. One.

Mr. HERRIN. What was that commodity, please?

The WITNESS. That applied on shoe blacking other than as provided under dressing, the rate being 75 cents via the Morgan Line and \$1.08 by the other routes.

438 By Mr. GANN:

Q. What was the number of commodities shown on January 18, 1900, where the rates were lower over the Morgan Line?

A. 94.

Q. The next date?

A. The dates vary between January 18, 1900, and January 1, 1899.

Q. As shown in that table headed "Dates as noted", how many commodities were there where the rates over the Morgan Line were lower than by the all-rail routes?

A. These rates were effective on various dates during that period and there were 102 commodities that were lower via the Morgan Mallory Line than the other.

Mr. BLAIR. Was that at all times or some particular time?

The WITNESS. Not necessarily at all times; they were changing more or less during the period.

By Mr. GANN:

Q. And they were compiled in that form for the sake of convenience rather than making it so elaborate?

A. Yes.

Q. The number was what?

439 A. 102.

Q. Take the next date, January 1st, 1909; how many commodities were there?

A. 21.

Q. October 10, 1910?

A. 17.

Q. And April 15, 1913?

A. 7.

Q. Referring to the table headed May 10, 1893, were there a number of commodities where the rates via the Morgan Line were materially less than by the all-rail route?

A. Yes.

Mr. HERRIN. That is a little indefinite. What is meant by "materially"?

Mr. GANN. Where the disparity between the rates effective over the Morgan Line and the all-rail rate amounts to a considerable figure in dollars and cents.

Mr. HERRIN. That is still indefinite.

Mr. McCLENEN. Give some illustration.

By Mr. GANN:

Q. Take the rate, for instance, on nails or spikes, cut or wire, n. o. s. in boxes or kegs; what was the rate over the Morgan Line?

A. 30 cents per hundred pounds.

Q. What was the rate by other routes?

A. 70 cents per hundred pounds.

Q. Take the rates on billets, blooms, ingots, muckbar and scrap under the heading of iron and steel articles; what was the rate by the Morgan Line?

A. 30 cents per hundred pounds.

Q. And the other rate by other routes?

A. 75 cents.

Q. Referring to the item "ship chandlery, pitch and tar", what was the rate over the Morgan Line?

A. 30 cents.

Q. And over the other route?

A. \$1.06.

Q. Look at the item of cement, building or paving; what was the rate over the Morgan Line?

A. 30 cents.

Mr. BLAIR. What year are you referring to?

Mr. GANN. May 10, 1893.

By Mr. GANN:

Q. And by way of the other route?

A. \$1.10.

Mr. GANN. The petitioner offers in evidence as Exhibit 30 a statement showing the rates on various commodities from New York City to California terminals via water and rail, via gulf routes, as compared with rates by other routes.

Mr. BLAIR. So that we may determine whether there is a legal objection to the offer, I will ask what is the purpose of the offer?

Mr. GANN. Simply to show comprehensively the same things that the witness has been stating.

Mr. DUNNE. But what is the purpose of showing the difference in rates?

Mr. McCLENNEN. To show that the Southern Pacific Company by the Morgan Line was making lower rates than were made by all railroads.

Mr. DUNNE. For the purpose of showing that it was soliciting and taking the business at these lower rates?

Mr. McCLENNEN. For the purpose of showing whatever the statement would be probative to show.

(The statement referred to was thereupon marked "Petitioner Exhibit No. 30, September 25, 1914", and will be found in the volume of exhibits.)

(Whereupon a recess was taken until 2 o'clock p. m.)

ARTHUR A. TOPPING, the witness under examination at the taking of recess, resumed the stand.

Direct examination (continued) by Mr. GANN:

Q. Mr. Topping, the statement marked Exhibit No. 30 shows rates applicable on commodities from New York City to California terminals. What are California terminals? That is a technical term, may we may as well have it described in the record.

A. They are set forth here, in attachments to the exhibit, by photographic pages.

Q. Were those pages photographed from the original tariffs on file with the commission in Washington?

A. They were photographed from one of the transcontinental tariffs.

Q. Which was in effect at the time these statements were compiled?

A. Yes, sir.

Q. Name some of the principal California terminals shown on the list before you.

443 A. We have San Pedro, California; Los Angeles, California; San Francisco, California; Sacramento, California; Stockton, California; San Jose, California; San Diego, California; there are in all probably fifty or more—Oakland, California; Berkeley, California; Alameda, California; Marysville, California.

Q. They are all in California unless otherwise noted, are they not?

A. All California terminals are in the State of California.

Q. It happens that this rate territory does not extend out into other States?

A. No, sir.

Q. This statement as compiled is correct, to the best of your knowledge and belief?

A. It is; yes, sir.

Q. I show you another statement, Mr. Topping, which was prepared by the Division of Tariffs upon request of counsel for the Government, which purports to be a statement showing the rates

various commodities from California terminals to New York City by way of the Southern Pacific Railroad Company and the Morgan

Line Steamship Company as compared with rates via other routes. Was that statement prepared under your supervision?

A. Yes, sir.

Q. And this statement is the supplement or complement of the statement which we have just talked about, is it?

A. The other statement is westbound; this is eastbound.

Q. The same general observations about the headings will apply in this case, will they not?

A. Yes, sir.

Q. The tariffs from which these rates were taken cover a period from what date?

A. From June 17, 1895, up to May 22, 1914.

Q. The date the statement was compiled in the Division of Tariffs?

A. Yes, sir.

Q. Take the first period shown in the statement, June 17, 1895: Have you made a computation as to how many rates there were in effect via the Morgan Line which were lower than the rates in effect via other all-rail lines?

A. Yes, sir.

Q. How many are there?

A. Four.

Q. As the number is so limited, will you state what they are?

A. Beans via Morgan Line, fifty; via other lines, one dollar per hundred pounds.

Green coffee in sacks via Morgan Line, twenty; other lines, one dollar.

Strained honey via Morgan Line, seventy-five; other lines, \$1.10.

Alfalfa seed via Morgan Line, seventy-five; other lines, \$1.25.

Q. Take the next date, January 10, 1898: How many commodities were there in effect on that date which carried a lower rate by the Morgan Line or Mallory Line than by other all-rail routes?

A. Seventeen.

Q. What are the principal ones?

A. Barley in sacks.

Q. What was the rate by the Morgan Line?

A. Seventy-five; and by other lines, one dollar.

Green coffee, seventy-five, Morgan Line; other lines, one dollar.

Glue, seventy-five via Morgan Line; \$1.20 by other lines.

Rice, in packages, seventy-five cents via Morgan Line; other lines, one dollar.

Q. That is sufficient for illustration. Take the next date, July 11, 1898: How many commodities which took a lower rate via the Morgan or Mallory Lines than were applicable over the all-rail routes?

A. One.

Q. And that was what?

A. Infusorial earth; via the Morgan Line the rate was sixty, while by the other routes it was one dollar.

Q. The next date, January 18, 1900: How many were there where the commodities applicable via the Morgan Line carried a lower rate than via the all-rail routes?

A. One.

Q. And that was what?

A. Wool in grease; eighty via the Morgan Line, and via the other lines the rate was a class rate.

Q. And, as a general rule, the class rate is higher than the commodity rate?

A. As a rule; yes, sir.

Q. You do not know what the class rate is in this instance, do you?

447 A. I could not say what class was applicable on wool on that date.

Q. Take the next date, October 12, 1903; how many commodities were there where the rates via the Morgan and Mallory Lines were lower than the rates via the all-rail routes?

A. One.

Q. What was that?

A. Whole barley; by the Morgan Line the rate was fifty cent, and the rate via the other lines was seventy-five.

Q. And on January 1, 1909, what was the number of commodities where the rate was less over the Morgan and Mallory Lines?

A. Three.

Q. What are those?

A. Barley, sixty-five via the Morgan Line, and by other lines seventy-five.

Alfalfa seed, via the Morgan Line, the rate was \$1.20, and the rate via the other lines was \$1.25.

Rice: The rate via the Morgan Line was sixty, and the rates via the other lines were class rates.

448 Q. And as in the other explanation you made about class rates, the presumption is, generally speaking, that the class rates are higher than the commodity rates?

A. Yes, sir.

Q. You do not know what the class rate on rice in packages on that date was, do you?

A. No, sir.

Q. What does the last column represent as to date?

A. The date seems to have been omitted in the last column.

Q. By inadvertence?

A. I assume that it was.

Q. Are there any rates, assuming that the heading for that column should have been the same as the others, which were lower by the Morgan and Mallory Lines than were applicable via the all-rail routes?

A. The rates are the same.

Q. So there are no commodities which took a lower rate?

A. No, sir.

Q. Is that statement correct, to the best of your knowledge and belief, Mr. Topping?

A. Yes.

Mr. GANN. Petitioner offers in evidence, as Exhibit No. 31, a statement showing rates on various commodities from California terminals to New York City via the Southern Pacific Railroad and the Morgan Line, as compared with rates in effect via other routes.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 31, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

Q. I show you Southern Pacific Company joint freight tariff No. 426, I. C. C. 3088, issued November 20, 1908, effective January 1, 1909, and ask you if that is the original tariff filed by the Southern Pacific Company with the Interstate Commerce Commission at Washington, as is required by law.

A. Yes.

Q. What is the number, in the filing system which the Interstate Commerce Commission uses, designating this particular tariff, and the date when it was received in the office of the commission?

A. The filing number is 146691; the filing date is November 25, 1908.

Q. I show you a copy of Southern Pacific Company joint freight tariff No. 426, I. C. C. 3088, issued November 20, 1908, effective January 1, 1909, and ask you if you have compared this tariff with the original tariff which was on file in Washington?

A. Yes.

Q. Is it a facsimile copy?

A. Yes.

Q. On page 22 of this tariff there are rates shown on what commodity?

Q. A. Wool in grease, carloads.

Q. With a minimum weight of what?

A. 20,000 pounds.

Q. The rates, wool in grease in carloads, minimum 20,000 pounds, are applicable from what points, as shown by the pages of the tariff?

A. From Corinne, Utah, and Marmol, Nevada.

Q. And from what other points?

A. Certain other points taking group 3, as shown on pages 6 and 7 of the tariff.

Q. What are those points, some of them?

A. Cobre, Nevada; Elko, Nevada; Humboldt, Nevada; Winnemucca, Nevada; Balfour, Utah; Blue Creek, Utah; Bovine, Utah; Dathol, Utah; Gartney, Utah; Hansen, Utah; Kelton, Utah; Kelmar, Utah; Lake, Utah; Matlin, Utah; Metaurus, Utah; Monument, Utah; Ombey, Utah; Peplin, Utah; Promontory, Utah; Rozel, Utah; Stokes, Utah; Surbon, Utah; Terrace, Utah; and Umbria Junction, Utah.

Q. To what points are these rates on wool in grease, carload minimum of 20,000 pounds, applicable from the stations you have just named?

A. New York, N. Y., and Boston, Mass.

452 Q. And what is the rate as carried by this tariff which you have?

A. \$2.07 $\frac{1}{2}$  cents.

Q. Per hundred pounds?

A. Per hundred pounds.

Q. By what route are these rates applicable?

A. Via Southern Pacific, via Rio Grande, New Mexico, and Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company, via New Orleans, La.; Southern Pacific Company's Atlantic steamship lines—Morgan Line—and New York Pier. Or Galveston, Harrisburg & San Antonio Railroad Company via Galveston, Texas; Southern Pacific Company's Atlantic steamship lines—Morgan Line—and New York Pier.

Q. I will ask you whether, from your knowledge, you know the location of the station designated Rio Grande, New Mexico.

A. Yes; Rio Grande is located near the State line of the States of Texas and New Mexico, just outside of the corporate limits of E

453 Q. Paso, Texas, and is the western terminal of the Galveston, Harrisburg & San Antonio Railway.

Mr. GANN. Petitioner offers in evidence as Exhibit No. 3088, Southern Pacific Company's joint freight tariff No. 426, I. C. C. 3088, issued by the Southern Pacific Company; the Arizona-Colorado Railroad Company; Arizona Southern Railroad Company; Boreas Loyalton Railroad; Eureka & Palisade Railroad Company; Gilpin Valley, Globe & Northern Railway Company; Nevada & California

Railway; Nevada-California-Oregon Railway; and the Sierra Valley's Railway.

(The tariff referred to was thereupon marked "Petitioner's Exhibit No. 32, September 25, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. GANN:

Q. Do you know if the rates named in this tariff are effective by way of Ogden and the Union Pacific Railroad from the tariffs which you have brought with you?

A. I have nothing here that would show that.

Cross-examination by Mr. DUNNE:

Q. Exhibits 30 and 31, as I understand it, are compilations which you made from tariffs on file in the office in which you are employed?

454 A. I didn't make them personally.

Q. They were made by somebody?

A. They were made by a clerk in the office.

Q. It was a clerical operation from the tariffs on file?

A. Yes.

Q. New York, as mentioned in these exhibits as a place of origin and destination, means New York City strictly, does it not?

A. The rates are not confined to New York City. I think the exhibits show that the rates are applicable to and from New York and common points.

Q. I do not so understand the exhibit, and I will ask you to look at it, please [showing witness Exhibit No. 30].

A. The caption on the exhibit does read "New York, N. Y." It does not include anything further than that.

Q. So that these exhibits, so far as their face discloses, are addressed to New York City on the one side and California terminals upon the other?

A. That is correct; yes.

Q. Now, do these Exhibits 30 and 31 involve a comparison between the Morgan or Mallory Line and any other routes except all-rail routes?

455 A. They involve the Morgan or Mallory Line on the one hand and all other available routes on the other.

Q. Will you please indicate to me the text of the exhibit which conveys that idea?

A. The heading of Exhibit 30, which I am looking at here, states—

Q. Read it, please.

A. It states "Mallory Line; other routes."

Q. Other routes. It don't say "all other routes", does it?

A. No, sir.

Q. And you are not now prepared to say that this exhibit furnishes a comparison between the Morgan and Mallory Lines upon the one side and any routes upon the other side, except all-rail routes, are you?

A. Well, I can only say—it say the rates of the Morgan Line on the one hand and the other routes on the other.

Q. Other routes?

A. Other routes.

Q. Are you prepared to say that the term "other routes" as used in the captions of these exhibits includes any routes except all-rail routes? Are you prepared to say that?

456 Mr. McCLENNEN. There is no contention at present that the phrase "other routes" has reference to anything other than all-rail routes.

Mr. DUNNE. Please note that the phrase "other routes" has no other contention except the phrase "all-rail routes", and that will suspend all further examination on that point.

By Mr. DUNNE:

Q. Another thing, does the selection of the particularly numbered years in these exhibits carry any significance to your mind beyond the circumstance that you were requested to furnish the data for those years?

A. That is all.

Q. Were you requested to furnish the data for those selected years or your associate or assistant?

A. Yes; he was.

Mr. HERRIN. For those particular dates?

The WITNESS. Those particular dates.

Redirect examination by Mr. GANN:

Q. Were those requests so specific, as counsel would indicate, 457 that for a particular day of a particular year which is shown on the statement you were requested to file these statements, or were you asked to prepare rate statements from a period beginning in 1888 and continuing to the present time?

A. These particular dates shown in these headings were not shown in the request; we were asked to compile these rates from 1888 up to the present time. These date headings show the various tariff changes.

Q. So there is no significance in the particular date at the head of the statement other than that there was a change in the ~~tariff~~ continental tariff of that date; is that true?

A. That is true; yes.

MR. GANN. That is all. Any further questions?

MR. DUNNE. That is all.

ROBERT S. LOVETT was called as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:

Direct examination by Mr. ORR:

Q. Your name and address?

A. Robert Scott Lovett; business address, 165 Broadway, New York City.

Q. Your present occupation?

A. I am chairman of the executive committee of the Union Pacific Railroad Company and of the companies controlled by it through ownership of stock.

Q. How long have you been engaged in the railroad service of one kind and another?

A. Well, railroad service of a kind I commenced in 1878. I have been connected with railroads, principally as attorney, ever since that time, except one period of about a year.

Q. When did your connection as attorney start; I mean for the railroads?

A. In June, 1883.

Q. With what company?

A. The Houston East & West Texas.

Q. Was that at that time a part of the Southern Pacific system?

A. No; it was not.

Q. Is it now?

A. Yes.

Q. Will you kindly state the experience and railroad connections you have had since that date to the present time?

A. Since the date I became attorney for the Houston East & West?

Q. Yes; if you please.

A. I was attorney for the receivers of the Houston East & West Texas Railway Company from 1885 to 1889; assistant general attorney for the Texas & Pacific Railway Company about a year; and then general attorney of the Texas & Pacific Railway Company until October 1st, 1892. I then became a member of the firm at Houston, Texas, that were at that time general attorneys for one of the Southern Pacific lines, and for the Missouri, Kansas & Texas Railway Company, and perhaps some other minor companies. I afterwards became general attorney for all the Southern Pacific lines in Texas, and as a member of that firm I gave my time chiefly to the railroad business. We were general attorneys, and in that position were also counsel and the advisors of the railroad officers in the State. I left Texas January 1st, 1904, and came to New York as counsel for the Southern Pacific Company and the Union

460 Pacific Company, and of the companies controlled by them and soon after coming to New York—I do not recall just how soon, but I think within a year—I became a director of the Union Pacific Railroad Company and the Southern Pacific Company and many of the companies controlled by them, and a member of the executive committee. I was in very active connection with the management of the Union Pacific Railroad Company and Southern Pacific system after that, up to the time of Mr. Harriman's death, in September, 1909. Shortly before his death, I do not remember just how long, but probably some time in 1908, I was vice president of the Union Pacific and Southern Pacific Company and many companies controlled by them, and in September, 1909, following Mr. Harriman's death, was elected chairman of the executive committee and some days later, probably within a month or so, president of the Southern Pacific Company and of the Union Pacific, and practically all the companies controlled by those two systems. I held that position as chairman of the executive committee and president until—I think it was December, 1911—when, with the approval of the board of directors, I reorganized the management by res

461 ing as president of the Union Pacific and the Southern Pacific companies and of many of their subsidiary companies and we elected a local man, largely, as president; I retained the chairmanship of the executive committee and remained chief executive officer until after the decision of the Supreme Court in what is commonly referred to as the Union Pacific and Southern Pacific merger case, when I resigned as chairman of the executive committee and director of the Southern Pacific Company and of all other companies controlled by it. I think that occurred in January, 1912. Since then I have retained the position of chairman of the executive committee of the Union Pacific Railroad Company and of the companies which it controls.

462 Q. You are actively in charge of that property as such, are you?

A. I am the chief executive officer.

Q. You are familiar, are you not, with the lines of the Southern Pacific and Central Pacific and Union Pacific Railroads?

A. Yes, sir.

Q. Their location, I mean?

A. Yes, sir.

Q. I will ask you to examine this map, which has been put in record as Exhibit 1. The Union Pacific lines are colored in blue, Southern Pacific lines other than the Central are colored in red, it is intended that the Central Pacific lines should be colored in purple. Will you examine that map and state, in a general way, if it fairly represents their location?

A. Referring, first, to the lines of the Union Pacific Railroad Company, this map shows the company as operating a line from St. Joseph, Missouri, to Hastings, Nebraska, by way of Marysville. That is not a Union Pacific line.

Q. That is the St. Joseph & Grand Island?

A. The Union Pacific owns the majority of the stock, but not all.

Q. But it does not operate it?

A. It does not operate it. The St. Joseph & Grand Island, as shown on that map, runs from St. Joseph, Missouri, by way of Marysville and Hastings, to Grand Island, Nebraska. Otherwise, I believe the map correctly shows the lines owned and operated by the Union Pacific Railroad Company. It does not, however, show the lines of the Oregon Short Line Railroad Company nor of the Oregon & Washington Railroad and Navigation Company.

Mr. BLAIR. Is not that a part of your system—those two lines?

The WITNESS. We consider it a part. They are operated by the companies that own them; that is, the Oregon Short Line Railroad Company operates the lines that it owns, and the Oregon & Washington Railroad & Navigation Company operates the lines that it owns. The Union Pacific Railroad Company owns all the stock in both those companies, and we consider them, in ordinary speech, as a part of the Union Pacific system.

By Mr. ORR:

Q. As to the lines represented on the map in purple, being the Central Pacific, what do you say about that being a fair representation of its mileage?

A. The purple colors correctly represent the lines now owned by the Central Pacific Railway Company.

Q. And the Southern Pacific in red, and the steamship line?

A. The Southern Pacific Company operates, under lease, all of the lines shown in red, extending from points in Oregon and California, Arizona and New Mexico, with certain exceptions. There are some lines—for instance, I think the line down to Coos Bay, which is represented on that line, I do not think has been constructed.

Mr. McCLENNEN. That is a hatched line, I think.

The WITNESS. I believe it is. There is a hatched line in Sacramento Valley that I do not understand has been constructed, and in Arizona there are some small lines that I do not think are now operated by the Southern Pacific Company, the Arizona Eastern—they are branches, however, as shown on this map. The other lines—that is, the lines lying east of the boundary line between Texas and New Mexico, just west of El Paso—those lines are operated by the companies that own them, the Texas and Louisiana corporations; but

465 the stock of all those companies in Texas and Louisiana which operate the lines shown in red on this map, except those shares held by directors, and perhaps a few others, an insignificant number, are owned by the Southern Pacific Company.

Q. As to the steamship line from New Orleans?

A. The Southern Pacific Company operates lines of steam between New York and New Orleans and New York and Galveston substantially on the routes shown in red.

Q. The Southern Pacific Company controls, either through stock ownership, practically all of the mileage represented in red there?

A. Yes; all of it.

Q. And operates it all?

A. No. It operates itself only the steamship lines and the road lines in Oregon, California, and New Mexico. It does not operate any lines in Louisiana and Texas.

Q. But it controls those lines through stock ownership?

A. Through stock ownership.

Q. Describe, if you will, what is known as the Sunset Route.

A. It is a line made up of the steamship lines from New York to New Orleans and Galveston and the lines controlled by the Southern Pacific in Louisiana and Texas and westward through Arizona and New Mexico and California. I cannot draw the line exactly in California as between what is called the Ogden Route and the Sunset Route—but the line by way of El Paso is what is commonly referred to as the Sunset Route.

Q. Does the Southern Pacific Company own any of the stock of the Central Pacific Railway Company?

A. My best information up to the time of my relinquishment of my connection with the company was that it owned all of the stock.

Q. And it has owned all of it since the organization of the company, if it does now?

A. I know that only historically back of 1899. In that year I know it has owned all of it ever since it was issued, in 1899.

Q. Are you acquainted with certain divisions of the country for traffic purposes known as Central Freight Association territory, Atlantic Seaboard territory and Western Trunk Line territory?

A. I understand that in a general way.

467 Q. You know in a general way the territory covered by these different designations?

A. Yes, sir.

Q. Are you informed through your various connections and associations as to the manner in which freight tonnage originally either in the Atlantic Seaboard territory or in California was handled by the Southern Pacific Company?

A. When?

Q. In April, 1901?

A. I know it only by reason of my connection with those matters since January 1, 1904. I had no connection with the Central Pacific Railroad Company prior to 1904 and I had a very limited connection with the Southern Pacific Company prior to that time—limited to my time in Texas. I know it, however, as I might say, in a historical way from my connection with the company since 1904.

Q. You know it also in a historical way, as you stated, prior to that, do you not?

A. In the same way only.

Q. You may state, if you will, the manner in which that traffic was solicited by the Southern Pacific Company and the route it would take in shipment if they got it.

Mr. HERRIN. At what time?

Mr. ORR. Prior to 1901.

Mr. HERRIN. We object to that. I do not see why we should call witnesses who knew the matter of their own knowledge at that time, or why we should deal with Judge Lovett, who says he only knows it in a historical way. I do not object to anything that comes within his actual knowledge, but as to anything prior to 1904, I understand Judge Lovett to say that he does not know except in a historical way.

By Mr. ORR:

Q. You may speak of your knowledge of that subject after 1904 and not prior to 1901.

A. Beginning with 1904 all traffic in Atlantic Seaboard territory, including California, was solicited by the Southern Pacific representatives on the Sunset Route.

Q. Would that mean water lines to New Orleans and Galveston, Galveston and from there by rail to California?

A. Yes, sir.

Q. Is that the rule up to the present time?

A. It is.

Q. Is that solicitation now active or passive?

A. I have no doubt it is very active.

Q. Take shipments, if you know, originating or ending in Central Freight Association territory. Do you know how they were solicited and have been since 1904 up to 1913—up to the time of what we call the unmerging of the Union Pacific and Southern Pacific?

A. Up to the time of the unmerging it was solicited preferentially the Ogden gateway.

Q. And since that time?

A. Not knowing all about the views of both parties since the unmerging, I do not know positively. My information is, from the best information I can get—

Mr. BLAIR. We object to testimony based on information.

The WITNESS. I should state, however, that I conceive it to be my business to find out how the solicitation is done, and make inquiries of our traffic officers as to how it is done, and get reports occasionally. That is the information that comes to me in an official way. That is the information that I have.

Mr. BLAIR. But, really, we should have a chance to examine the traffic officers ourselves, and hear what the conclusion is as to how this business is solicited.

By Mr. ORR:

470 Q. Will you answer as to how it was solicited since the unmerging?

A. My information, acquired in the way I have stated, is that the business north of the Ohio River—not Ohio River points—and west of Pittsburgh and Buffalo, is solicited by the Ogden gateway to Central California. I think there is some doubt—at least I have some doubt—as to just how far that is true of points nearer Pittsburgh and Buffalo—Cleveland, Ohio, for example. I am not certain about that as I am about the situation farther west, like Chicago.

Q. Is any of the business solicited to be sent through the New Orleans or El Paso gateway as far west as Chicago that you know of?

A. By the Southern Pacific Company?

Q. Yes.

471 A. Lines leading to New Orleans and to various junctions in Texas, like Beaumont, Houston, Shreveport, Dennison, Fort Worth, El Paso, Texas, solicit that business via those junctions. The Southern Pacific solicitors, even in Chicago, do not, as far as I have been able to ascertain, work against the solicitation of those lines. Acting independently in Chicago, I think the Southern Pacific solicitors would solicit by way of the Ogden gateway to Central California. The Union Pacific acts upon the presumption that they would do that. We work preferentially with the Southern Pacific.

Q. You are working for the business that way yourself?

A. Yes; exclusively.

Q. Do you know of any instance where the Southern Pacific assisted your solicitors in getting the business that way, through the Ogden gateway?

A. No. I would not know of particular instances of solicitation. It is general policy that I speak of, that I understand governs.

Q. You assume, from the fact that you are working the business that way as far as you can control it or influence it, that that is so—that that is the reason the Southern Pacific is assisting, if it ever has, in that direction?

A. I know that is one reason. We work everything that we can for Central California in connection with the Southern Pacific through the Ogden gateway, and we expect them, from all that territory, to do the same thing; and if they do not—I do not know what our position would be. We are assuming that from this territory they are working preferentially the Ogden gateway, in connection with our line. I should say that I do not know how active their solicitation in that territory is.

Q. I understood you to say that the Central Pacific stock is owned entirely by the Southern Pacific Company. Does the Southern Pacific Company control the operation of the Central Pacific lines?

A. Yes; it operates them.

Q. Describe, if you will, an all-rail route commencing at San Francisco or Oakland, over the Central Pacific Railway, and from there east to the Atlantic seaboard, such as would be used in case of an all-rail shipment.

A. One which is actually used under existing conditions?

Q. The shortest all-rail route that you know.

A. The Southern Pacific Railroad from Oakland by way of Benicia to Sacramento; the Central Pacific from Sacramento to Ogden, Utah; the Union Pacific from Ogden to Council Bluffs—I am not sure as to the shorter line from Council Bluffs to the Atlantic seaboard, but the lines actually used, and the distances are approximately the same—the Chicago North Western from Council Bluffs to Chicago, or the Chicago, Milwaukee & St. Paul from Council Bluffs to Chicago, or the Illinois Central from Council Bluffs to Chicago, or the Burlington between the same points, or the Rock Island between the same points, or the Chicago & Great Western between the same points; thence the various trunk lines from Chicago to the Atlantic seaboard—the New York Central, Pennsylvania, Erie, Baltimore & Ohio, and other lines that have connections with some of the eastern lines, like the Lehigh Valley and the Delaware, Lackawanna & Western.

Mr. DUNNE. I assume that Judge Lovett has it in mind, without actually expressing it, that San Francisco was the initial point. Am I right?

The WITNESS. Oakland; that was the question asked.

By Mr. ORR:

Q. He stated from Oakland by way of Benicia.

A. Of course that is not the only line. I am trying to give what I understand to be the shortest line.

Q. Has the Central Pacific a line from Oakland which could take the place of the Southern Pacific to Sacramento?

A. Yes; the Central Pacific from Oakland by way of Niles and Lathrop and Stockton to Sacramento, and thence east over the other lines I have described.

Q. How would the route you have just described, being all rail, compare in distance with what we know as the Sunset Route, part water and part rail, between the points you have named; that is, between San Francisco and New York City?

A. That is easily obtainable from tables. From memory I should say that it would be about 1,500 miles shorter than the Sunset Route, by way of Galveston and New Orleans. I do not mean to be exact about that, but that is my recollection of about what the difference in distance is.

Q. Does the Union Pacific Company solicit passenger and freight traffic over the line you have described between the two cities?

475 A. It does, very actively.

Q. In its solicitation of business does it take the Central Pacific line from Oakland to a connection with the Union Pacific?

A. Our connection at Ogden is physically with the Central Pacific. The Southern Pacific Company is the lessee. Our business is done with the Southern Pacific Company and not with the Central Pacific.

Q. I am speaking not of the company that operates it but of the railroads.

A. It moves both ways. The business as actually moved goes over the line that I first described—that is, by way of Benicia; and also goes by way of the Niles-Stockton line; that is, freight business I do not know how much passenger business goes that way.

Q. The business solicited by the Union Pacific is solicited over that route generally, whether it goes by Niles or Benicia?

A. Yes.

Q. Is there much competition between that route and the Sunset Route for the business described?

A. Between the Union Pacific and the Sunset Route?

476 Q. Yes; the Union Pacific—that route; yes—and the Sunset Route.

A. There is between the Union Pacific part of that line. Of course there is no competition between the Central Pacific end of it and the Sunset Route, because it is controlled by the same company; that is, not competition in the sense in which I use the term. There is competition between the Union Pacific and its eastern connections with the Southern Pacific Company by way of the Sunset Route—that is, its El Paso gateway and its connections—for that business.

Q. You mean there is competition in the sense of effort to get business?

A. Yes; and all that competition implies.

Q. If the Central Pacific were separated from and independent of the Southern Pacific control, what effect would that have in the matter of competition on the route you have described?

A. Of course, assuming that the Central Pacific is controlled by motives that ordinarily control people, it would work very actively for that business by way of the Ogden gateway and its connections east, while the Southern Pacific would work very actively for it by way of the El Paso gateway.

Q. Much more so than is now the case?

Mr. BLAIR. This is a very intelligent witness, and it is not necessary to lead him.

Mr. ORR. I appreciate that.

The WITNESS. As I stated a moment ago, that portion of the line out of Ogden—that is, what is now the Central Pacific, that is controlled by the Southern Pacific—does not work the business from the Atlantic seaboard territory by way of the Ogden gateway at all, except, perhaps, where it can not get it by way of the Sunset line; then it would work it by way of Ogden, but it works preferentially by the Sunset line. The Central Pacific is not a factor in it at all, because it is not an operating company; and if the Central Pacific were independent, undoubtedly it would work very actively in California. It would be a new factor in that competition.

Q. Are you able to state, from your acquaintance with the business and localities, the natural course shipments of freight would take originating north of Tehachapi, California, destined to the Atlantic seaboard, or east of the Missouri River and St. Louis or at St. Louis?

Mr. HERRIN. What do you mean by "natural route"? The shortest?

Mr. ORR. I mean whose territory would that be considered? What would be the shortest and best route, if distance and time were considered and the route it would naturally take if not solicited some other way?

The WITNESS. Your question relates to shipments by rail as against shipments by way of the canal?

By Mr. ORR:

Q. I will ask the question to apply as against any other route.

A. Why, the shortest and most direct route would be the Central Pacific and Union Pacific and their connections east.

Q. Describe briefly, if you will, about what territory in California on the west coast that would cover.

A. I should say that it would cover everything north of Tehachapi, which is about midway between San Francisco and Los Angeles;

perhaps it is a little nearer Los Angeles and north of Santa Barbara up to the Oregon boundary. Mojave or Bakersfield—Mojave, I should say—is the best way to identify the point that I mean by the Tehachapi.

479 Q. Some objection was made, perhaps not in the form of an objection, but it seems to be objectionable to counsel for the defendant, to the form of a question I propounded to you, asking you what would be the effect upon competition if the Central Pacific were separated from the control of the Southern Pacific.

Mr. BLAIR. Does anything appear on the record in regard to the views of counsel for the defendant in regard to that question?

Mr. ORR. I believe so.

Mr. BLAIR. I do not recall it.

(By request of counsel for the petitioner, the reporter repeated the pending question.)

Mr. ORR. I did not mean "effect", but "extent."

Br. Mr. ORR:

Q. I ask, would it be much greater? I will ask you to give your views again, if you will, on the extent of that competition and the effect of it.

A. Well, at this time the Southern Pacific, through its control of the lines of the Central Pacific and the Southern Pacific Railroad Company and some other companies, controls all of the rail transportation in Central California, except that controlled by the Santa Fe and Western Pacific; and it naturally prefers the route that affords it the longest haul or the most revenue—not always necessarily the longest haul, because sometimes the difference in the division is not great enough to justify the difference in the length of the haul; and, controlling the Central Pacific as well as the Southern Pacific, it directs the policy of all of the properties and their management. If the Central Pacific Railroad Company were operating its own railroad, independently of the control of the Southern Pacific, it would have no interest in sending any of this business through the El Paso gateway, as far as I can see. Its interest would be to pull all that it can, or all that it could control, through the Ogden gateway; while the Southern Pacific as Southern Pacific Railroad, no longer having any interest in sending any of that business through the Ogden gateway, would put it to the south or southeast through the El Paso gateway. There would naturally be that struggle between the Central Pacific and the Southern Pacific in this central California territory.

481 Q. You may state, if you will, whether in your opinion the separation of the Central Pacific from the control of the

Southern Pacific would tend to better service or what, if any, benefit would be derived by the shipper from the separation.

A. Well, I do not know that I can answer that; that is going rather far afield, Mr. Orr. I can only assume that there would result the things that usually follow the action of corporations acting in their own interest. There would be competition between the Central Pacific line and the Southern Pacific line where there is none now. As to how far competition is beneficial that is another question. There would be competition where there is none now, or practically none.

Q. Are you informed and able to state anything in connection with the movement of wool originating on the lines of the Central Pacific Railway as far east, we will say, as Corinne?

A. I know in a historical way. By that I mean the knowledge I have acquired of those matters since 1904, how it was handled prior to 1901, and how it was handled during what is called the merger.

During the merger it moved through the Ogden gateway as far as possible to the east. I know this only in a historical way.

Mr. BLAIR. We object to this statement of the witness as to how it was moved prior to 1901.

The WITNESS. I have not stated that.

Mr. HERRIN. There is any number of witnesses who know these facts. There is no reason to trouble Judge Lovett as to what he does not know.

By Mr. ORR:

Q. You may state what, in your opinion, from your knowledge of the situation, would be the effect upon the competitive power of the Union Pacific Railroad Company in competing for transcontinental business or other business reaching in the territory served if there were a separation, if the Central Pacific Railway Company were separated from the control of the Southern Pacific Company.

A. The Union Pacific now is merely a connection of the Southern Pacific Company at Ogden, and is not as dependent on the Southern Pacific Company as it formerly was for the business it gets; but the Southern Pacific Company is in the position, by reason of its ownership of the Central Pacific, to divert a great deal of business from there to the Union Pacific. If the Union Pacific had its own line into Central California it would not be dependent on any other line, but would have its own line to come directly in contact with the shippers. I am not prepared to say, however, that we could get any more business than than we get now.

Q. You say the Union Pacific is not as dependent now as it formerly was; why not?

A. Well, perhaps I could do better by contrasting the situation now with what it was when the Union Pacific acquired control of the Southern Pacific. At that time the shipper had no right to route his traffic. That was in the hands of the carrier. There was only one railroad between Ogden or Utah and California. That was in 1901. The Union Pacific was absolutely dependent on the Southern Pacific for its California business. It had no line of its own and there was no other line. Since 1901 what is commonly referred to as the Clark road has been constructed between Salt Lake City and Los Angeles and San Pedro. The Union Pacific has a half interest and equal voice in the management of that line. That was open for business in 1905. That affords the Union Pacific an entrance into Southern California where it is a competitor with the Southern Pacific Company. The Western Pacific line has been opened from Salt Lake City to central California; that is, to Sacramento, Stockton, Oakland, and San Francisco, and some other points, and the Union Pacific, or the Short Line, connects with it at Salt Lake City, and, while I do not want to throw stones at it, it is not as good a railroad as the Central Pacific in any respect.

484 Mr. HERRIN. Which road is that?

The WITNESS. The Western Pacific. That has been opened, it is a railroad and it is there, but it was not there in 1901. So, with those considerations, the building of the line from Salt Lake City to Los Angeles, opened for business in 1905, the passage of the Hepburn Act in 1906, which gave the shipper the right to route his freight, and the opening of the Western Pacific, the Union Pacific is not dependent to the same extent now as it was formerly on the Central Pacific; but the Central Pacific is far and away the best connection for the Union Pacific to Central California. It is the shortest line and the best railroad in every sense of the word. Does that answer your question?

By Mr. ORR:

Q. Yes; thank you. The Western Pacific was opened for business in 1910, was it not?

485 A. It is my recollection; it did not make any great impression on the business of the Union Pacific or Central Pacific but I think it was about that date.

Q. You may state whether, in your opinion, solicitation of business has much or little effect on the securing of business.

A. It has some; service has more than any other now. Conditions have changed very much in recent years in that respect.

Q. What now controls the selection of routes principally?

A. First, service; and, next, personal idiosyncrasies of the shipper. I should say next to that is solicitation.

Q. Would you say that because of the all-rail route you have described from the east to the west coast and the reverse it would be in position to give better service than the Sunset Route on the same business—transcontinental business?

A. Would it be in position?

Q. Yes.

A. I think it is in position now.

Q. Well, could that be increased or in any manner changed by the separation of the Central from the Southern Pacific control?

A. I would not like to say that, because I think the Southern Pacific Company is working now, and has been ever since the merger, as it certainly was during the merger, the Ogden gateway very effectively. How long it will continue to do that I do not know. Of course during the control of the Southern Pacific Company by the Union Pacific Company the Union Pacific Company's policy dominated the Southern Pacific in that respect, and the Union Pacific was naturally in favor of the Central Pacific line, with a due sense of responsibility for the entire Southern Pacific system, and because the two systems had the haul from the Missouri River to the Pacific. Perhaps I am going further than the question calls for; I want to make my position clear on that. I can not say that the situation would be improved beyond what it is now by the Southern Pacific, because up to this time, whatever it may do in the future, the Southern Pacific is working the Central Pacific very efficiently.

Q. What I intended to convey by my question was whether the increase of effort in the way of competition for the competing traffic would have the tendency to increase the quality of service.

Q. You say service is what induces the business, and my inquiry was as to whether the increase in competition which you have described would be likely to increase the quality of service.

A. That, according to my observation, is what always has been the result of competition—improvement in service.

Mr. ORR. You may cross-examine.

Cross-examination by MR. BLAIR:

Q. You have spoken of solicitation from and to points in Central California being made by the Union Pacific through the Ogden gateway. How does the Union Pacific preferentially route the traffic to Southern California?

A. By way of Salt Lake City and the so-called Clark route.

Q. Is that the San Pedro, Salt Lake & Los Angeles road?

A. Those words are in its name. I believe its correct name is the San Pedro, Los Angeles & Salt Lake Railroad Company.

Q. That is an affiliated line of the Union Pacific?

A. The Union Pacific owns a half interest.

488 Q. You do not see that line on the Government map?

A. It is here.

Q. But it is not colored?

A. It is black.

Q. It is not observable to the naked eye from where I am.

Mr. McCLENNEN. That is assertive rather than interrogative.

By Mr. BLAIR:

Q. I believe you also called attention to the fact that this line from Granger, I believe, to Portland is not on the map.

Mr. ORR. You mean on this map?

Mr. BLAIR. By map I mean the map produced by the petitioners Exhibit 1.

The WITNESS. It is on the map, but in small lines, the same as the other railroads.

By Mr. BLAIR:

Q. Like all other railroads in the country.

A. It is not in brilliant colors, like the others.

By Mr. HERRIN:

Q. The ordinary rule, of course, which these railroad companies follow is their own interest, I suppose, by routing as far as they can influence routing; they influence it the way they get the most revenue?

A. That is the result of my observation.

Q. And hence we have the long haul preferred as against the shorter haul?

A. By railroad companies, yes, in those cases where they get more revenue for the long haul, which they usually do.

Q. So that if a company had the same interest, whether freight went one way or the other, two lines that form an alternative line, practically the same interest, it would not make much difference as to that company which way that freight went?

A. Not except for trading purposes, with connections.

Q. But so far as the routing is concerned, it would be the same as the company whether it went one way or the other? If, for example, the Southern Pacific Company owned a line down on the Sun Route for about the same distance that the Central Pacific runs, if the Central run it would be practically neutral, would it not, as to whether the freight came one way or the other?

A. Yes; except in so far as the service that some connections afforded might enable it to get traffic as against a competitor.

Q. That is true; but we were talking about the influence of this long haul or short haul?

A. Yes.

Q. If it had the same interest only in one road as in the other it would be indifferent as to whether it came one way or the other?

A. That is true, except, as I say, possibly the question of trading with connections and service beyond.

Q. We do not want to get into that, because I do not know where it would lead.

A. I don't know either.

Q. If the Southern Pacific Company had no interest except the Sunset Route it would have a good deal less interest than it has in the Central route, because it owns the Central Pacific line, so it has substantial interest in that railroad, has it not?

A. The Central Pacific?

A. Yes.

A. Yes; it controls the Central Pacific—owns the Central Pacific.

Q. I say, it has a substantial interest in that route?

A. Yes.

Q. As it owns the line to Ogden?

A. Yes.

Q. And comparatively the investment in the Central Pacific line almost approximates the investment in the Southern Pacific line, does it not, the Sunset line, the rail line?

A. I do not think so.

Q. There is not very much difference when you come at it. Now, so far as it has an interest in the Central line that neutralizes, does it not, just to that extent its effort to push business over the Sunset line?

A. Yes; certainly.

Q. It would do that, would it not?

A. Yes.

Q. If a man had a one-fourth interest in that line and a three-fourths interest in the other, the one-fourth interest would have its effect in neutralizing the use of the long line?

A. That would seem plain enough.

Q. So that if you take the Central Pacific away from the Southern, leaving it no interest in the Central line, it would undoubtedly increase its efforts to force business over the only line it had?

A. It would increase its efforts to force business—

Q. (Interposing.) Over the only line it had, which would be the Sunset line?

A. Undoubtedly.

Q. Then, if the Union Pacific had the Central, you say you would increase your efforts? You could increase them?

A. Yes. I also stated that I was not certain by any means that we would get more business than we are getting now.

Q. I am coming to that. So that this question of mere solicitation in and of itself does not cut much figure, does it, under the law? For instance, suppose the Union Pacific should not solicit at all; it would not violate any law, would it, if it kept its road running?

Mr. McCLENNEN. My objection to the question is that it calls for an opinion of law, and I do not want the judge to go on record.

493 Q. Mr. HERRIN. I do not care about taking up time on that; it is not very important, except that the judge has stated—  
I do not know that I care to go any further.

By Mr. HERRIN:

Q. You say you do not know whether you would get as much or more business than you are now getting over the Central route, that all this change might not actually affect materially the actual cost of traffic?

A. Do you want me to answer that?

Q. Yes.

A. Of course, there is a large field here, if you want me to go into it.

Mr. ORR. Go ahead, if you will.

By Mr. HERRIN:

Q. I only wished to say that you spoke a moment ago and said that you might not get as much business—

Mr. ORR. That is not the question. I ask that the witness be permitted to answer.

The WITNESS. My opinion is that we would not get as much business for a good while, if we had the Central Pacific, as we do now.

By Mr. HERRIN:

Q. You can develop it.

494 A. I can give the reasons for it.

Q. That is obvious. Since the law has given to the shippers the right to route, he is apprised of that. They generally understand that they can route their freight.

A. I think they do.

Q. And as far as your experience goes, the shippers are quite all to their own interest, as to the routes that should be selected. I mean the shipper would not consent to route freight against his own interest.

A. No; I think as to that, Mr. Herrin, that the shipper has for many years been very much alive to traffic conditions. I do not think he has the same interest in it now that he had formerly. Formerly he got rebates and concessions, and it was a question of bidding for his business. He did not have the right to route at that time. Now, it is largely a question of service.

Q. Now he is confined to service?

A. Yes.

Q. And he would be naturally prone to select the route that would give him the best service?

A. It has a good deal to do also—the question of location, the line on which the man who controls the business is located is of importance. I do not care whether he is the consignee or the consignor; the man who controls the routing, whether consignor or consignee, his location has a good deal to do with his choice of routes.

Q. And that is what you group under the heading of idiosyncrasies? You used some such word.

A. I should say this as a matter of interest; what I should say, as a matter of personal idiosyncrasies, is where it is practically immaterial to him which way it goes. He may dislike some officer of some particular line and turn his freight away from that, because he has no interest in it, no interest to be gained. There are situations like that—or personal likes or personal friendships; that applies a great deal where the rates and service are equal. That is what I referred to by "idiosyncrasies"; but the matter to which you refer is more a matter of substantial interest, the location of the shipper on the tracks or on the line where he may want a good many favors, service, and such things.

Q. Well, that goes to service?

A. But it may not be that particular shipment, but other shipments.

406 Redirect examination by Mr. ORR:

Q. In answer to a question of Judge Herrin's, you stated that you might not get so much business for a while. State what you intended to convey by that answer; what did you mean?

A. I meant that most of the business in Central California—that is, in California north of Mojave and Santa Barbara—originates on the tracks of the Southern Pacific Railroad Company, not on the tracks of the Central Pacific. The Southern Pacific Company, controlling all of these lines, now sends a great deal of the business through the Ogden gateway, because it has an interest in the Central Pacific. It has that inducement. If it did not own the Central Pacific—if, for example, the Union Pacific owned it, or if the Cen-

tral Pacific were independent—the Southern Pacific would not send any business through the Ogden gateway that it could send through the El Paso gateway; but most of the construction in recent years in Central California has been done by the Southern Pacific Railroad Company and not by the Central Pacific, and unless the Central

497 Pacific could make some trade with the Southern Pacific in divisions that would almost buy that business from it, it would perhaps have to do a lot of building of branches and spend a lot of money that way to get that business, and during that period most of the business would go the other way; that is what I meant.

Q. Does the Central Pacific, even now, send any business through the Ogden gateway, in transcontinental business, that it can control over the Sunset Route to Atlantic coast territory?

A. You mean to the Atlantic seaboard?

Q. Yes.

A. No; I think not.

Q. You would not lose any of that business?

A. We would not lose any of that.

Q. You have not quite answered the question yet. What did you mean when you limited your increase of business to "a while", as you stated—"we might not get it for a while." What did you mean by that, that there would be a time when you would get it?

A. I think that anybody who owned the Central Pacific Railroad if the Southern Pacific did not own it, I think the Central Pacific alone, or in the hands of somebody else, unless it did some 498 extension, would be very much in the situation of the Western Pacific, because the extensions in California for many years have not been done by the Central Pacific; the Central Pacific would have to either do a lot of construction or would have to make a trade with the Southern Pacific.

Q. Well, the Central Pacific is not precisely in the condition that the Western Pacific is in regard to having no feeders, is it?

A. No; but it has not as many as it would need, if it were independent of the Southern Pacific, unless it got proper divisions from the Southern Pacific—I mean liberal divisions.

Q. Have you any knowledge of the extent, by way of comparison of the transcontinental business with that of the business other than transcontinental that would be affected by the Southern Pacific sending it another way?

A. In the event that the Central was separated from the Southern Pacific?

Q. Yes.

A. I can not give any figures of percentages; I speak only in general way as to the effect of that situation.

Q. What I want to know is whether it would affect a very large percentage of the business?

A. Why, if the Central Pacific were separated, if it were independent, both the Central Pacific and the Southern Pacific would be in San Francisco, Oakland, San Jose, Stockton, Sacramento, Fresno, and all other towns and places in Central California, contending for traffic, one for the Ogden gateway and the other for the El Paso gateway, and it would affect all that competition and would make competitive practically all the traffic of that territory going east.

Q. Yes; but you have stated, I believe, that none of the Atlantic seaboard business is routed by the Southern Pacific through the Ogden gateway that it can control through the New Orleans gateway; that is the fact, is it not?

A. Yes.

Mr. ORR. That is all.

Mr. BLAIR. No questions.

(Whereupon an adjournment was taken until Tuesday, September 29, 1914, at 10.30 o'clock a. m.)

SIXTH DAY.

ROOM 720, CUSTOM HOUSE,  
*New York City, September 29, 1914.*

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClenen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Railroad Company, et al.

JOHN B. DEFRIEST was called as a witness on behalf of the petitioner and, being first duly sworn, testified as follows:

Direct examination by Mr. McCLENEN:

Q. Your full name?

A. John Becker DeFriest.

Q. And your residence?

A. 411 West 115th Street.

Q. New York City?

A. New York City.

Q. What is your occupation?

A. General eastern agent of the Union Pacific Railroad.

Q. You have occupied that position about how long?

A. Six years.

Q. Prior to that what was your position?

A. General agent in Philadelphia of the Union Pacific.

Q. For how long?

A. Three years.

Q. And prior to that?

A. Chief clerk in the Union Pacific New York office.

Q. For how long?

A. Seventeen years.

Q. That makes a total, then, of your connection with the Union Pacific in seaboard territory of 26 years?

A. 26 years.

Q. What are your duties as general eastern freight agent?

A. Soliciting freight for the Union Pacific.

Q. Personally, or through other solicitors?

A. Personally and through the help of other soliciting agents.

Q. What is the territory in which you solicit or 502 is under your supervision?

A. Atlantic seaboard territory east of Harrisburg and Buffalo and north of the Virginia-North Carolina State line, and including all New England.

Q. That is, north of the southern boundary line of Virginia?

A. Yes.

Q. And running west as far as Harrisburg, Pennsylvania, and Buffalo, New York?

A. Yes.

Q. Does that mean to include Harrisburg and Buffalo or exclude them?

A. It includes them.

Q. Your duties, then, and of the men under you require the obtaining of such California and Pacific slope freight for the Union Pacific as you can by legitimate means?

A. Yes.

Q. In working that freight do you have any preference, or does the Union Pacific Railroad have any preference as between the different lines east of Omaha?

A. Not very material, except the Milwaukee & Northwestern in our most direct connection.

503 Q. And how is the freight routed beyond Ogden?

A. Southern Pacific.

Q. That is, the rails which in this case we speak of as the Central Pacific rails?

A. Yes.

Q. In soliciting Atlantic seaboard freight, are you brought in contact with the representatives or solicitors of the Southern Pacific Company?

A. We are brought in contact with them; they are our connecting line and we refer to them quite frequently.

Q. Are you brought into such relation with them as to know how they are seeking to route Atlantic seaboard freight for California, Oregon, and Nevada?

A. Yes.

Q. What do they seek?

A. They try to get it through the New Orleans gateway wherever possible.

Q. Failing that, what is their next preference?

A. Well, that is a question; they have got a good many connections, and, so far as I can see, they are rather neutral as to the different gateways through which the freight passes.

Q. In your efforts to get freight for the Union Pacific, do you have any cooperation from the solicitors of the Chicago & Northwestern and the Chicago, Milwaukee & St. Paul?

A. Yes.

Q. Do you get any cooperation from the solicitors of the Southern Pacific?

A. Not that I know of; in other words, their soliciting men do not right out with our soliciting men and work for business that way.

Q. You have been speaking, I take it, as of the present time in your answers. How far back has the condition which you have just been describing existed?

A. Since the segregation of the Union Pacific and Southern Pacific.

Q. That is, in 1913?

A. No; it was before that, wasn't it? I don't remember just how long ago it was since the segregation.

Q. The decision was in December, 1912, as I recall it, and the actual decree a little later. How does the situation which you have described as existing since that segregation, which we will call 55 for convenience the unmerging, compare with the condition that existed in seaboard territory prior to the merger with the Union Pacific in 1901?

A. I think the situation now is about the same as it was before the merger.

Q. What is the normal freight time from California points over the rails of the Central Pacific-Union Pacific and eastern connections to New York City?

A. I think that depends entirely upon the commodity that is moved. If they have a freight train of green fruit, they would move it much quicker than they would a train of dead freight.

Q. Take the green fruit first; what is the ordinary time eastbound over the line I have indicated on that?

A. About ten or eleven days.

Q. The next ordinary freight in carload lots?

A. I should judge about fourteen days. I do not watch the eastern movement very closely, because outside of the fruit business we do not trace very many shipments.

Q. Now, the same question in the reverse direction, westbound!

A. It will average up about thirteen days.

506 Q. Do you experience many instances, either eastbound or westbound, of stoppages in transit and in the switching yards?

A. No, sir.

Q. I was using the term stoppage as indicating delay, not a legal stoppage.

A. We do not have any trouble unless the cars are in bad order.

Q. What do you mean?

A. If they break down or something happens to them in transit.

Q. How long has that been true, that the cars have been running through without delays?

A. Well, I know for the past three years we have not had any trouble at all.

Q. How far to the west and south do you come in contact with the solicitation by the Southern Pacific preferentially by the Sun Route through New Orleans?

A. Well, the most of their solicitation for the New Orleans gateway is, well, I should say out as far as Harrisburg and down as far as Baltimore; below that they do not get so much for the New Orleans gateway; that is, via the Morgan Line.

507 Q. They absorb the local into New York, do they?

A. No; that is part of the through rate. On some roads they have a regular division, and on others there is a local charge into New York.

Q. I am not sure that I have that clearly. Take from Rochester, New York, going by New York and Sunset to New Orleans, does the travel from Rochester to San Francisco at the same rate as it would travel from New York City to San Francisco?

A. Yes.

Q. You do not have anything directly to do with the Central Freight Association territory yourself?

A. No, sir.

Q. In this seaboard territory is the volume of freight for which you are competing against the Southern Pacific large or small?

A. It is quite heavy.

508 Cross-examination by Mr. BLAIR:

Q. Competition for this business which you have been describing is not confined to the Ogden route and the Sunset Route is it?

A. No, sir.

Q. There are a number of other lines at the same time striving to get this traffic?

A. Yes, sir.

Q. The American-Hawaiian Line is an active competitor for this traffic, is it not?

A. Yes, sir.

Q. It goes after all business in Atlantic seaboard territory?

A. Yes, sir.

Q. During the merger between the Union Pacific and the Southern Pacific was not freight preferentially sought for the Sunset Route?

A. Yes, sir.

Q. In about the same way that it is since the "unmerger"?

A. Yes, sir.

Q. You spoke of the through rate from Rochester being the same as from the port of New York. You were not asked whether that rate from Rochester to New York was absorbed by the water line. What do you know about that?

A. It is a part of the through rate, and the lines divide the rate via the Morgan Line—that is, from Rochester to New York and New York to San Francisco—the same as the all-rail lines from New York by the Ogden gateway or any other gateway divide the rates.

Q. So that the rail line from Rochester to New York has a division of that through rate?

A. As I understand it; yes.

Q. Which is paid by the shipper?

A. Yes, sir.

Q. Do you know what the normal time for the movement of traffic by the Sunset Route is?

A. It is supposed to be the same as via the Ogden gateway.

By Mr. DUNNE:

Q. I understood you to say that the conditions were the same now as during the merger when you were answering Mr. McClen-  
510 nen in respect of the solicitation by the long haul.

A. No.

Q. Please explain that.

A. During the merger if anything was lost or they could not secure the business via the New Orleans gateway they tried to get it in connection with the Union Pacific road via Ogden.

Q. What are the affiliated lines of the Western Pacific between Salt Lake and San Francisco?

A. The D. & R. G. and the Missouri Pacific.

Q. And what is the Missouri Pacific's gateway?

A. St. Louis.

Q. The Santa Fe has a road all the way from Chicago to San Francisco, has it not?

A. Yes, sir.

Q. So that Atlantic seaboard business—business originating in seaboard territory and bound for California—may go through the St. Louis gateway by the Missouri Pacific, the D. & R. G., and the Western Pacific?

A. Yes, sir.

Q. Which is a through affiliated line from the St. Louis gateway to California?

511 A. Yes, sir.

Q. Similarly, business originating in the seaboard territory and passing through the Chicago gateway, may go by the Santa Fe all-rail from Chicago to San Francisco?

A. Yes, sir.

Q. And those lines that I have mentioned are actively competing for Atlantic seaboard business, are they not?

A. Just as hard as anybody else; yes.

Q. And in the event of successful competition by those lines for the business, none of that business moves by the Southern Pacific between Ogden and San Francisco?

A. No, sir.

Q. How many all-rail lines are competing in Atlantic seaboard business for the all-rail movement of that business? Can you name some of the principal lines?

A. There are seven trunk lines from New York to Chicago that are working for it; all of the Iowa lines working via Chicago and Omaha or Kansas City, and also from St. Louis to Kansas City, and all of the rail lines working from the Missouri River to San Francisco. Combining them, altogether there are quite a number.

Q. That is an extremely active and persistent state of 512 competition, is it not?

A. Yes, sir.

Q. Is it to the interest of the Southern Pacific Company, in the event that it is unable to procure the long haul by way of the Morgan line, to have that freight move through the Chicago gateway and by way of Ogden to California?

A. Yes.

Q. Why is it to the interest of the Southern Pacific to have that move that way?

A. In order to get the haul on the business from Ogden to San Francisco.

Q. And that is against the adverse and competitive movement of the same freight by the Santa Fe out of Chicago, or by the Missouri Pacific and its affiliated lines through the St. Louis gateway, is it not?

A. Yes, sir.

Q. The American-Hawaiian Line is an all-water line, practically, is it not, from New York to San Francisco?

A. Yes, sir.

Q. Is that line in active competition, and has it been for some time, as well with the all-rail lines that you mentioned as with the Sunset line of the Southern Pacific?

A. It is.

Q. Does that competition promise to become, if anything, more active in the future?

A. If they get more boats; yes, sir.

Q. Are there any other water lines out of New York soliciting Atlantic seaboard business?

A. Yes, sir.

Q. Please name them.

A. All-water?

Q. If there are any all-water, name them.

A. An all-water line is the Luckenbach Steamship Company, and W. R. Grace & Company.

Q. Between what ports?

A. Between New York and San Francisco and other Pacific ports. The Mallory Line of steamers between New York and Galveston, and the A. T. & S. F.

Q. The Mallory Line, in connection with the Atchison, Topeka & Santa Fe, is a mixed water and rail service by way of the Gulf, is not?

A. Yes.

Q. So that there are two competing mixed rail and water services from and to Atlantic seaboard territory via the Gulf of Mexico?

A. Yes.

Q. Namely, the Mallory Line with its rail connections, and the Morgan Line with its rail connections?

A. Yes, sir.

Q. Is there any Atlantic seaboard business moving by all-rail through New Orleans or any other southern gateway to California?

A. Some; yes.

Q. What is the southern gateway through which it moves?

A. It moves sometimes through Shreveport, sometimes through Monroe, and it also moves through New Orleans direct.

Q. Is that business relatively considerable?

A. I could not give you any idea of the tonnage that moves.

Q. No; I am simply asking you if it is relatively considerable. I mean, relatively to the takings of the all-rail trunk lines and the mixed rail and water service by the Gulf.

A. No.

515 Q. Why?

A. Because I do not think they can make the same time rail as they are making by the Morgan Line. In other words, it takes the all-rail line longer to get to New Orleans with their freight.

Q. It is not a practicable or a reasonable method of doing business?

A. Oh, yes; they are doing quite some business that way.

Q. But it is relatively inconsiderable, measured up against takings of these through transportation routes?

A. Yes.

Mr. DUNNE. That is all.

Redirect examination by Mr. McCLENNEN:

Q. Have you any knowledge of the tonnage carried by the Mallory Line as compared with the tonnage carried by the Sunset from New York to California, and the reverse?

A. We have no records at all. The only way I can tell is through the solicitation. There is a good deal more business moves by the Morgan Line and Southern Pacific than by the Mallory Line and the Santa Fe.

516 Q. Is the Mallory Line exclusively Santa Fe on California business, or is it an independent line?

A. The bulk of the California business moves by the Santa Fe, do not think there is hardly any moves by any other line.

Q. That is, you mean the bulk of the Mallory Line business?

A. Yes.

Q. Do you know whether any of it moves in connection with Texas & Pacific?

A. We seldom hear of any moving by way of the Mallory Line and the Texas & Pacific.

RALPH MILLER JOHNSON was called as a witness on behalf of petitioner, and being duly sworn testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your name?

A. Ralph Miller Johnson.

Q. And your residence?

A. New York.

517 Q. And your address?

A. 57 West Forty-eighth Street.

Q. What is your occupation, Mr. Johnson?

A. General eastern agent of the Chicago & North Western road.

Q. How long have you occupied that position?

A. Seven years.

Q. What railroad experience had you had prior to that, and where located?

A. I have had a varied experience—from bill clerk, station agent, traveling agent, general agent, general eastern agent, twenty years, of which eleven years have been in the seaboard territory.

Q. So far as the interests of California business are concerned, where do the lines of the Chicago & North Western run?

A. Between Chicago and Omaha.

Q. What are your duties in your present position?

A. To try to secure as much freight as we can for our system lines.

I speak of "our system"; it is the Chicago, St. Paul, Minneapolis & Omaha as well as the Chicago & North Western.

Q. To shorten this: Have you heard the direct examination and the cross-examination of Mr. De Friest, just completed?

A. I have.

Q. Do you agree with the testimony that he has given on direct and cross-examination?

A. Absolutely.

Mr. McCLENNEN. That is all.

Cross-examination by Mr. DUNNE:

Q. Just one question: What is the mileage haul of your company involved in the transportation between the Atlantic seaboard and California?

A. About 500 miles.

Q. What is the mileage haul involved in the Southern Pacific link in that through line between Ogden and California?

A. I can not say offhand.

Q. I will not press that question, because the record shows it.

519 WILLIAM W. HALL was called as a witness on behalf of the petitioner, and being duly sworn testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your name?

A. William W. Hall.

Q. And your residence?

A. Cranford, New Jersey.

Q. What is your address?

A. 117 Cranford Avenue.

Q. What is your occupation, Mr. Hall?

A. General agent of the Chicago, Milwaukee & St. Paul Railroad.

Q. How long have you occupied that position?

A. Four years.

Q. Located in New York City?

A. Yes.

Q. What railroad experience had you prior to that?

A. New England freight and passenger agent for three and a half years in Boston.

Q. Of the same line?

520 A. Yes, sir. General agent of the Chicago, Milwaukee & St. Paul Railroad at Chicago for four years prior to that.

General agent at Pittsburgh, Cleveland, Cincinnati prior to that. Before that traffic freight agent.

Q. Your duties at the present time cover what territory?

A. East of Oswego, Syracuse, and to Scranton and Wilkes-Barre with a line then drawn through Trenton, north of that to the seaboard, and Hudson River north and south. I have nothing to do with New England.

Q. Within that territory your duty is to get such business as you can for the Chicago, Milwaukee & St. Paul?

A. Yes, sir.

Q. As far as affects Atlantic seaboard-California business, where do the lines of the Chicago, Milwaukee & St. Paul run?

A. Chicago to Omaha and Council Bluffs.

Q. You have heard the testimony just given by Mr. De Fries and Mr. Johnson this morning?

A. Yes, sir.

521 Q. Do you agree with the testimony on direct examination and cross-examination that they have given as expressing your understanding of the situation?

A. Yes, sir.

Mr. McCLENNEN. That is all.

Cross-examination by Mr. DUNNE:

Q. What is your mileage between Chicago and Omaha?

A. 491 miles, I believe.

Mr. DUNNE. That is all.

(Whereupon an adjournment was taken until to-morrow, Wednesday, September 30, 1914, at 10.30 o'clock a. m.)

ROOM 720, CUSTOM HOUSE,  
New York City, September 30, 1914

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClellan and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, Mr. Dune, for the Southern Pacific Company, et al.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 33 memoranda prepared by Mr. J. C. Stubbs for use in the case of the United States against the Union Pacific Railroad Company, and introduced in that case June 11, 1908, and appearing at printed page 3397, showing the method used to divide (distribute) transcontinental freight rates as between the different connecting roads between certain points shown in the memoranda, it being agreed by counsel that these memoranda, subject to corrections, may be deemed as duly proved.

(The memoranda referred to was thereupon marked "Petitioner's Exhibit No. 33, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

523 Mr. McCLENNEN. It is agreed by counsel for petitioner and counsel for defendants that for the purpose of showing at any time the statutory law of the State of California, both as to public acts, private acts, general acts, or special acts, or the absence of any such acts, the printed volumes of such laws may be referred to and deemed to be in evidence, so far as material, without any further proof.

Saving the question of materiality, it is agreed by counsel for petitioner and counsel for defendants that Exhibit No. 17, the certified copy of the record of the meeting of April 12, 1898, of the stockholders of the Central Pacific Railroad Company shall have the same force and effect in evidence as the original record of that meeting shown on the books of the company would have, subject to correction if the original be found and any errors in the copy be shown to exist.

The petitioner puts in evidence as Exhibit No. 34 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of earnings and expenses of property leased from the Central Pacific Railroad Company by the Southern Pacific Company from January 1, 1888, to June 30, 1913.

524 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 34, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 35 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of gross operating income, operating expenses and net operating income of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, for the fiscal years ending December 31, 1880, 1883, 1888, 1893, and June 30, 1899, 1901, and 1913.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 35, September 30, 1914," and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 36 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the operating income, operating expenses and net operating income of the Southern Pacific Company and of the proprietary lines, both in respect to lines leased and not leased, for the fiscal years ending December 31, 1899, June 30, 1899, June 30, 1901, and June 30, 1913.

525 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 36, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 37 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenses of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, for maintenance of way and structures for the years 1887 to 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 37, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 38 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenditure for maintenance of way and structures on the lines of the Southern Pacific Railroad Company and connecting through lines in Texas and Louisiana to New Orleans, making up the through Sunset Route from San Francisco, for the years 1887 to 1901, inclusive.

526 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 38, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 39 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the expenditure for additions and betterments, not including expenditures for construction of new lines, of the Central Pacific Railroad Company and Central Pacific Railway Company, respectively, from January 1, 1887, to June 30, 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 39, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. Petitioner puts in evidence as Exhibit No. 40 a statement prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of expenditures for additions and betterments, not including expenditures for construction of new lines, on the Southern Pacific Railroad Company's lines on connecting through lines in Texas and Louisiana to New Orleans, for the years 1887 to 1901, inclusive.

527 leans, making up the through Sunset Route to San Francisco, from March 1, 1885, to June 30, 1901, inclusive.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 40, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 41—which, by agreement of counsel for defendants, may be taken as duly proved, subject to correction if errors be found—a statement of dividends declared and paid by the Central Pacific Railroad Company and the Central Pacific Railway Company, respectively, from 1861 to 1913, and compiled, as to the period prior to 1887, from the statement of E. H. Miller, Jr., then secretary of the Central Pacific Railroad Company, as set forth in 5 Pacific Railway Commission Report, page 2547; and, as to the period subsequent thereto, from the annual reports of the Central Pacific Railroad Company to the Interstate Commerce Commission.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 41, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit No. 42, a list prepared under the supervision of counsel for defendants, at the request of counsel for petitioner, of the dates of opening for operation of the various portions of the Central Pacific Railroad and Southern Pacific Railroad and subsidiary lines, to the extent appearing on the exhibit, and subject to correction if any error appears to have been made.

(The list referred to was thereupon marked "Petitioner's Exhibit No. 42, September 30, 1914", and will be found in the volume of petitioner's exhibits.)

(Whereupon the taking of testimony in this cause was adjourned to Wednesday, October 7, 1914, at two o'clock p. m., at the Federal Building, Chicago, Ill.)

529 EIGHTH DAY.

ROOM 606, FEDERAL BUILDING,  
Chicago, Ill., October 7, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClenen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibits Nos. 43 to 58, inclusive, tonnage and revenue statements covering freight between different points therein stated and prepared under the super-

vision of counsel for defendants at the request of counsel for petitioner.

Mr. BLAIR. Counsel for defendants reserve the right to make any objections to which, in their opinion, these exhibits may be subject when the same are ready to be filed.

(The statements referred to were thereupon marked, respectively, "Petitioner's Exhibit No. 43, October 7, 1914", to "Petitioner's Exhibit No. 58, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

530 Mr. McCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 59" the copy certified by the Assistant Secretary of the Interior of the acceptance by the Central Pacific Railroad Company of the act of July 1, 1862.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 59, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 60" a copy certified by the Assistant Secretary of the Interior of the acceptance by the Union Pacific Railroad Company of the act of July 1, 1862.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 60, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as "Petitioner's Exhibit No. 61" a photograph of a certificate of stock of the Central Pacific Railroad Company, and it should be noted that the original certificate from which this is photographed has at the bottom lines such as are made by cutting off with scissors.

Mr. BLAIR. Have you any objection to stating the purpose or the relevancy of that certificate?

Mr. McCLENNEN. It is offered for the purpose of showing 531 at least among other things, the form of certificate that was issued by the company, which enabled stockholders to receive their dividends by the submission of dividend warrants, without the necessity of obtaining a transfer of stock into their own name on the books of the company, from which it will be argued, among other things, that the ownership of the stock in the company changed on an earlier date than would be shown by the transfer dates appearing on the books of the company into new names; so that the beneficiaries of the stock exceeded in number and differed in name from those appearing on the stock books of the company, in some instances.

(The photograph referred to was thereupon marked "Petitioner's Exhibit No. 61, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

52 BENJAMIN T. BOOZE was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. Your full name, please?

A. Benjamin T. Booze.

Q. Your residence?

A. Chicago.

Q. And your address?

A. My business address, 608 South Dearborn Street.

Q. You are connected with the Transcontinental Freight Bureau?

A. I am chief clerk of the Transcontinental Freight Bureau, yes.

Q. Some days ago did you receive from counsel for the Government in this case a request directed to Mr. Countiss, joint agent of that bureau, to make investigation for certain original contracts?

A. We did.

Q. And among others so requested were the originals of the contracts of September 28, 1883, of the Transcontinental Association, and November 8, 1883. Have you made an investigation in an effort to see whether you could find those contracts?

A. We did, sir, and could not find them.

Q. You are the official of that bureau who would have access, and the ability to get those contracts, if they were in the possession of the bureau?

A. Yes, sir.

Q. The Transcontinental Freight Bureau succeeded to the Transcontinental Association?

A. No, sir; not direct. There was a Transcontinental Freight Rate Committee between the two, that existed for about three or four years.

53 Q. So far as the old papers of the Transcontinental Association are still in existence and in normal custody they are, are they not, in the possession of the bureau?

A. What were left; most of them were destroyed, I understand. There are very few of the old Transcontinental Association records with us at the present time.

Q. Your investigation was such as to enable you to say that the bureau has not those originals?

A. Yes; our investigation was such that we know we have not got them.

Q. You were also asked to search for an agreement of October 1st, 1880, between the Transcontinental Association and the Pacific Mail Steamship Company. Did you make an investigation for that?

A. Yes, we did.

Q. Did you find that you had or had not that?

A. We found the original agreement, yes.

Q. Will you let me have that agreement?

A. Yes, sir. [Hands paper to counsel.] The papers showing the date of withdrawal and cancellation of contract are also enclosed with those papers.

535 Mr. McCLENNEN. The petitioner offers in evidence as Exhibit 62 the agreement just referred to by the witness, that is the agreement between the Transcontinental Association and the Southern Pacific Company and others dated October 1st, 1889.

May it be agreed that instead of the original the present Exhibit No. 24 may be used with the same effect as the original if it proves to be a true copy, and otherwise that the examiner may make a copy and the original be returned to Mr. Booze.

It should be noted that this original contains in pencil along the margin of the first sheet the words "Withdrawn ninety days after September 30, 1902" (which the witness states was intended to be 1892).

It has attached to it by a filing pin a letter of September 30th, 1892, on the letterhead of the Pacific Mail Steamship Company, signed W. W. Lane, secretary, acknowledging the receipt of a letter of September 27th from the Transcontinental Association, notifying of termination 90 days after September 30th, 1892, of the agreement between the Transcontinental Association and the Pacific Mail Steamship Company bearing date the 1st day of October, 1889.

There is also attached by the same pin a copy of a letter 536 on the letterhead of the Transcontinental Association, St.

Louis, Missouri, dated September 27, 1892, addressed to the Pacific Mail Steamship Company and signed E. P. Vining, chairman of the Transcontinental Association, announcing the intention of that association to terminate in ninety days after September 30th, 1892, all contracts and agreements now in force between the Transcontinental Association and the Pacific Mail Steamship Company, particularly the agreement bearing date of the 1st day of October 1899.

(The papers referred to were thereupon marked "Petitioner's Exhibit (Booze) No. 62, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

Q. Have you with you any other agreements between the Transcontinental Association and the Pacific Mail Steamship Company discovered by you in the course of the investigation requested by the petitioner?

A. I have only a copy, and our records do not show that the agreement ever went into effect. It is not signed, and it is dated January 1st, 1888. I have another one here that is signed later than

that. Our records do not even show that that ever went into effect, the old records there; they do not show that that ever went into effect.

537 Q. The unsigned draft I will return to you. Will you let me have the other contract which you have just referred to, that was signed?

A. That is the one I turned in there, the later [referring to Exhibit 62]. That is the one you asked for, too.

Q. What additional papers have you with you for which we requested a search?

A. Of those you requested we have only the old Transcontinental Association agreement; the only one that could be found that would be located in our records was one dated September 1, 1887, to take effect January 1, 1888, and that is the original document.

Q. May we have that?

A. Yes. [Hands paper to counsel.] That took effect January 1, 1888.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 63 the agreement just referred to by the witness, namely, the agreement dated December 1, 1887, between the Atchison, Topeka & Santa Fe Railroad Company, the Southern Pacific Company, and the Central Pacific Railroad Company, and numerous other companies; and this agreement has noted in pencil on the first page, "Notice of 538 withdrawal effective 12-31-92."

It is agreed by counsel that after this agreement has been copied into the record the original may be returned to the witness and the copy used with the same effect as the original.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 63, Booze, October 7, 1914", and will be found in the volume of exhibits.)

By Mr. McCLENNEN:

Q. Did you make this pencil endorsement of withdrawal on this agreement?

A. I did; yes.

Mr. HERRIN. And it is correct, is it?

The WITNESS. Yes; that is correct.

By Mr. McCLENNEN:

Q. When did you make that endorsement?

A. I made it within the last forty-eight hours, since looking over the papers.

Mr. HERRIN. You confirmed the fact from your records?

The WITNESS. Yes.

By Mr. McCLENNEN:

539 Q. Was the pencil endorsement that appears on Exhibit 6 also made by you?

A. Yes; it was.

Q. And when was that made?

A. That was made at the same time; when I was looking for the papers I wrote it on, and it should have been 1892.

Q. Exactly when did you make these endorsements?

A. Let me see, this is Wednesday; it was Monday, if I remember correctly, after receiving your letter. Monday afternoon; that is right. I went through all our records myself and dug them out.

Mr. HERRIN. These endorsements correctly state the time when those contracts were terminated?

The WITNESS. December 31, 1892. One of them I made 1902 which is incorrect.

By Mr. McCLENNEN:

Q. Did you consult with anyone in reference to making ~~such~~ endorsement before making it?

A. I did not; our records showed that.

Q. Why did it occur to you at this particular day and year of grace for the first time to make that endorsement?

A. Well, you will notice that Pacific Mail agreement there-I brought you the papers showing that that was withdrawn December 31, 1892, and when that was withdrawn I also found 540 papers, part papers, that the Transcontinental Association members had served notice on the association at the same time, or practically the same time, withdrawing from the association.

Q. My question was not directed quite so much to the fact of the endorsement as to why you happened to take this particular occasion to make it. Why was that?

A. Well, actually and truly to familiarize myself with it, as I was going through a great bunch of old papers, and I wanted to put it down there as a statement of fact, so that I would know exactly after

I got through.

541 Q. In the inquiry which led to your search was there any request made of you to investigate as to the dates when the agreements were withdrawn or terminated?

A. None whatever; no, sir. It was for my own information that I put that down.

Q. Was it possible that a native sensitiveness as to the character of the agreements led you to preserve at just this time the evidence of their mortality?

A. Not at all, sir; not at all. I might, by way of explanation, say that I hold a great many records at the Transcontinental Freight

Bureau, and to save myself looking over a great many records I put that down as I came to the proper papers, so that I can swear to it that it is correct; and to make myself perfectly satisfied I generally put down in pencil such notations. I go through papers every day down there, you might say—not legal papers, but other papers, rate matters, and so forth.

Q. Was I correct in thinking that you appealed to Mr. Herrin in the hearing here after my request for the production of these papers and before you handed them to me and obtained his gracious approval before actually handing them to me?

542 A. Well, I thought there were probably two parties in a case, and I had not said anything to the other parties, so naturally I wanted to see if it was agreeable to them before I handed them over to you. There are generally two parties to a case, as I understand it.

Mr. ORR. In some cases, but not in this case.

The WITNESS. I may be wrong—absolutely wrong.

Mr. BLAIR. I think possibly you will find that you are right.

Cross-examination by Mr. HERRIN:

Q. Did I ever speak to you on the subject of these papers?

A. No, sir.

Q. Did I ever speak to you in my life before just this time?

A. I think not.

Q. Did I ever see you before, as far as you know?

A. I have seen Mr. Herrin in San Francisco ten years ago or more, but I do not know that you knew me—no; I am sure you did not know me.

Q. For the comfort and assurance of Mr. McClenen, you do mean to say that I never spoke to you on this subject or had any communication with you?

543 A. Absolutely, sir.

Q. And no knowledge of it from you, or communication with you in any way?

A. I did not know that Mr. Herrin was connected with this case at all.

Q. And I was quite indifferent upon the subject?

A. Yes.

Redirect examination by Mr. McCLENEN:

Q. And you have the good judgment to be appreciative of the privation you have suffered in not enjoying Mr. Herrin's acquaintance until to-day?

A. I have.

Mr. HERRIN. But you can not say as much as to Mr. McClenen?

The WITNESS. May I mention that all of these papers were in effect or produced long before Mr. Countiss was agent of the bureau, before he was in charge or before I was connected with the bureau, so our records are very incomplete, and we understand that the transcontinental association records, almost all of them, were burned up. We have very few of them. That is why we were able to produce so few of the papers.

544

By Mr. McCLENNEN:

Q. But we may proceed with the understanding and with the definite assurance that all the agreements between the members of the Transcontinental Association and all the agreements between the association and the Pacific Mail Steamship Company, whatever their date, which are in the possession of the Transcontinental Freight Bureau or its control, have now been produced?

A. Yes, sir; you may rest assured of that.

Mr. McCLENNEN. That is all.

WILLIAM H. CONNOR was called as a witness on behalf of the petitioner, and being duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. What is your full name?

A. William H. Connor.

Q. And your residence?

A. Wyoming, Ohio.

Q. What is your address?

A. 411 Walnut Street, Cincinnati, Ohio.

Q. What is your occupation?

545 A. General agent of the Union Pacific Railroad Company.

Q. How long have you been connected either with the Union Pacific or the Southern Pacific Company?

A. I will give you a brief history. My railroad experience started in 1877 as a youngster; and until 1879 I was with the Chicago & Alton Railroad as an operator and clerk, ticket agent, bill clerk, in various places in those capacities.

September 1, 1879, I went to St. Louis with the St. Louis, Keokuk & Northwestern Railroad as city ticket agent and clerk. I remained there until the fall of 1880.

I then went to Keokuk, Iowa, as chief clerk in the general freight and passenger office of the same road. I remained in that capacity until May 30, 1887.

I then went to St. Paul and took a position with the St. Paul, Minneapolis & Manitoba Railroad in their advertising department.

I remained there until November 30, the same year. Then I went to Cincinnati, Ohio, and took a position with the Southern Pacific

Company as contracting freight agent. I continued as contracting freight agent until April 1, 1889, when I succeeded to the 546 position of commercial agent. I continued in that position until August 31, 1901, when the Union and the Southern Pacific offices in Cincinnati were merged.

On September 1 I became general agent of the consolidated offices. I continued as such until January 31, 1912—

Q. Do you mean January 31, 1912?

A. 1913; on which date the Union and Southern Pacific offices were separated. On February 1 I then continued as general agent of the Union Pacific Company, to date.

Q. And located, still, at Cincinnati?

A. Yes, sir.

Q. If I follow you, you have been twenty-seven continuous years located at Cincinnati, first with the Southern Pacific Company and then with the Southern Pacific Company and the Union Pacific Railroad Company, and then with the Union Pacific Railroad Company alone?

A. It will be twenty-seven years the first of the coming December.

Q. Did you, at the petitioner's request, secure and produce this map which I show you?

A. Yes, sir.

Q. By whom is that map published?

A. It is published by Mr. L. A. Lowrey, secretary of the 547 Central Freight Association, Chicago. It is an official map of railroad freight classification territories and freight traffic association territories of the United States.

Q. And the various divisions of freight territory, according to their nomenclature among railroad men, are shown upon the face of this map?

A. Yes, sir; divided into Trunk Line, Central Freight Association, and Transcontinental Freight Association, as well as numerous others specifically shown thereon.

Q. On the face of this map have you drawn the division line between the Central Freight Association territory and the Atlantic seaboard territory?

A. Yes; known as the Trunk Line, from a description as published by the Central Freight Association. It is an exact reproduction of their line.

Q. And that is this black line which begins at Niagara Falls on Lake Ontario?

A. Yes.

Q. Passes through Buffalo and irregularly down through Pittsburgh, and irregularly to Kenova, West Virginia?

A. Yes; that is just a little junction point on the river.

548 Q. Apart from that line, the map is as officially published?  
A. Yes, sir.

Mr. McCLENNEN. The petitioner puts in evidence, as petitioner's Exhibit No. 64, the map just referred to by the witness.

(The map referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 64, October 7, 1914.")

By Mr. McCLENNEN:

Q. Will you bound Central Freight Association territory?

A. Yes. It is bounded on the east by a line drawn from and including Buffalo, N. Y., via Erie Railroad, through Dayton to Salamanca, N. Y.; thence via Pennsylvania Railroad through Craydon and Warren to Oil City and Franklin, Pa.; thence via the Pennsylvania Railroad to Parker, Pa.; thence via B. & O. through Washington, Pa., and Wheeling to Bellaire, Ohio; thence via Ohio River to and including Kenova, West Virginia; thence via the C. & O. Railway to Ashland, Charleston, and Gauley, West Virginia, including all points thereon.

On the north by the north route of the Grand Trunk to and including Toronto to Ft. Gratiot, Michigan; thence via the north 549 and west shores of Lake Huron and Lake Michigan to Chicago, including all points located thereon.

On the west by a line from Chicago through Joliet and Streator to Peoria, Illinois; thence via T., P. & W. to East Burlington; thence via the east bank of the Mississippi River to its junction with Ohio River, including all points on above-described line.

On the south by and including points on the north bank of the Ohio River from Cairo, including Louisville to Coal Grove, Ohio, inclusive.

Q. During this time that you have been located at Cincinnati, what has been the territory under your supervision?

A. When I first went to Cincinnati it was pretty much in its primeval state, as far as the territorial lines were concerned. It was the first agency that they had west of New York City, and it had been there but a short time prior to my going to Cincinnati. I think the first territorial line that was issued to the Cincinnati office was May 28, 1889, and it started at Cleveland, including the same; thence west of a line drawn to Akron Valley Junction, and on the line of the C. & M. R. R. to Marietta, including all of those cities; west on the north side of the Ohio River to Cincinnati, Louisville, and in that vicinity, to and including Frankfort, Lexington, and other whiskey shipping points nearby; continuing on the north bank of the Ohio River to the Mississippi River, and thence to and including St. Louis; north to and including Keokuk; thence

south of a line drawn to Springfield, Decatur, and Paris, Terra Haute to Indianapolis; thence to Logansport, to a line drawn east of Goshen, Indiana; thence on the line of the Lake Shore & Michigan Southern Railway at Toledo, north to and including Detroit; thence east to and including Cleveland.

That was the first boundary line of the Cincinnati territory, and it was followed by the establishment of agencies in Pittsburgh, St. Louis, and Kansas City, and likewise the readjustment of the territory.

In the original days the New Orleans office looked after territory as far north as the Ohio River. That was all modified when the additional agencies were established; and the final territory that I looked after I could best outline by reading a second circular, if you care to have it; and it was likewise the territory that was re-assigned to me by Mr. Stubbs at the time of the merger.

Q. In 1901?

A. In 1901.

Q. And what is that territory?

A. That territory was from Cleveland, Ohio, to Akron by the Pennsylvania Company and Cleveland, Akron & Columbus Railway, including points thereon; thence to Marietta, inclusive, by Baltimore & Ohio and Pennsylvania Companies and points thereon; thence to Parkersburg, West Virginia, inclusive, by Baltimore & Ohio, including points thereon; thence an imaginary line to Charleston, West Virginia; thence to Clifton Forge, Virginia, inclusive, via C. & O. Railway, including points thereon; thence points west of Norfolk & Western Railway, Roanoke, West Virginia, and Bristol, Tennessee, inclusive; thence from the State line of Tennessee and Kentucky to Guthrie, not inclusive; thence following the line of the Louisville & Nashville Railroad to Wabash River, but not including Louisville & Nashville Railroad stations except Evansville, Indiana; thence via Indiana-Illinois State line, including points thereon of Wabash Railroad; then Wabash Railroad, Detroit line, to Ohio-Indiana State line; thence on said line to the intersection of the Michigan State line; thence by Ohio & Michigan State line to, but not including, Toledo; thence via south shore of Lake Erie to Cleveland.

That boundary continued absolutely without a change until July 1910, when we put a representative in the city of Cleveland. The northeastern boundary was modified to the extent that it took about thirty miles east of Cleveland off of the Pittsburgh territory and put it into my territory; but the shipping points east thereof were nothing to speak of. At the same time the city of Toledo at that date was taken out of the Detroit agent's territory and put under my

jurisdiction. So that since July 1 I have had the city of Toledo that I did not have from 1901 until 1910.

Mr. DUNNE. July 1 of what year?

The WITNESS. 1910. That was the date that they put Donald Stubbs over there as representative.

Mr. DUNNE. 1910, you say?

The WITNESS. Yes.

By Mr. McCLENNEN:

Q. This last long description, apart from the modifications  
553 you have mentioned, covers what you customarily call your territory?

A. Yes; known as the Cincinnati territory.

Q. And you call that the Cincinnati territory?

A. Yes, sir; it is so understood.

Q. In speaking of Cincinnati shipments do you use the term covering that whole territory?

A. Yes; that includes, of course, Cincinnati proper.

Q. You have spoken of your assignment to the joint agency at the time of the merger in 1901?

A. Yes.

Q. At that time were you furnished by the Southern Pacific Company and the Union Pacific Railroad Company with a statement of the proportional income to the combined companies on freight moved through the different gateways?

A. Yes, sir; through New Orleans and Missouri River channels.

Q. Is this paper which you have before you the statement?

A. Yes, sir.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 6 the statement thus referred to.

Mr. BLAIR. We object to it as incompetent, immaterial, and irrelevant to any issue in this cause.

554 (The statement referred to was thereupon marked "Petitioner's Exhibit No. 65, Connor, October 7, 1914", and will be found in the book of exhibits.)

By Mr. McCLENNEN:

Q. Did you, in the course of your business, have prepared a statement showing the movement of freight from the Cincinnati territory via the Sunset Route?

A. Yes, sir.

Q. Have you that paper before you?

A. Yes, sir; I have.

Q. When was that paper prepared?

A. At the close of our business in 1899.

Q. For what purpose?

A. It was for the purpose of submitting to my immediate superior, and likewise keeping a record in the office for my own benefit of the business we were doing.

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 66 the statement just referred to.

Mr. BLAIR. We object to that statement as incompetent and immaterial evidence and irrelevant to any issue in this cause.

Q. (The statement referred to was thereupon marked "Petitioner's Exhibit No. 66, Connor, October 7, 1914", and will be found in the volume of exhibits.)

By Mr. McCLENNEN:

Q. This statement, I understand, was made under your supervision as a part of your ordinary business?

A. Yes, sir.

Q. Let me make sure that we clearly understand what it covers.

This first page, am I right, states the number of carloads moving from your territory via New Orleans and the Sunset Route to all territories?

A. To California and other territories.

Q. And the figures indicate the number of carloads a month that moved from your territory in this way in each month of the years 1890 to 1899, inclusive?

A. Yes, sir.

Q. This does not include the movement of freight into your territory, does it?

A. No, sir; outbound only.

Q. Am I right in understanding that this second sheet shows the same carloads which appear on the first sheet, only, instead of being arranged by months they are arranged by destination points and for the several years?

A. Destination points and States; destination points in California; and the others are by States.

Q. For instance, this second page means that 659 carloads moved 1890 to California points, including therein a few cars to Oregon and Nevada, and 702 cars moved to Texas, New Mexico, and other southern points?

A. Southwestern points.

Q. And, in the same way, in the year 1898, for instance, from your territory there moved to California, Oregon, and Nevada 1,942 cars in the Sunset, and to Texas, New Mexico, and other southern points 5 cars?

A. Yes.

Q. During that period, 1890 to 1899, or, for convenience, from 1889 to the fall of 1901, did you have any records showing the movement of freight from your territory to California points by any line other than New Orleans and the Sunset Route?

A. No, sir.

557 Q. In the course of your business did you have occasion to investigate the quantity of freight moving from your territory which did not pass over the Sunset Route?

A. In my general solicitation I went against and became acquainted with more or less freight that I could not get over the Sunset Route that I lost.

Q. From your general knowledge of the situation, in charge of that office, what percentage, as nearly as you can state it, of the freight from your territory to California points, total freight, moved via New Orleans and the Sunset Route?

A. I believe it reached as high as 65 per cent.

Q. During the period from 1889 to the fall of 1901 were you in charge of all the solicitation in your territory for the Southern Pacific Company?

A. Yes, sir.

Q. What was the policy which you and the solicitors under you carried out with reference to the routing of traffic from California points to your territory?

A. We devoted our exclusive time and attention to the securing of that freight for our New Orleans gateway. We bent every effort with everybody that could lend any assistance. On 558 receiving agents and solicitors in California, if it was controlled there, were notified and appealed to for assistance. If the control rested at Chicago, St. Louis, Pittsburgh, New York, or any other point we went after it through our representative there. If it was controlled in my territory I looked out for it there, and we pulled together all the time and worked every means known to influence and secure that shipment for the Sunset Route. We never let up until the shipment was on and the cars moving.

Q. What was the method of movement to the New Orleans gateway?

A. Principally the Queen & Crescent. They were considered on first connection, and at times we used the Louisville & Nashville, and at other times the Illinois Central, and at times all three.

Q. When you use the expression "New Orleans gateway", do you have reference to what?

A. The Sunset Route of the Southern Pacific Company, undoubtedly.

Q. What, if any, effort was expended by you or the representatives of the Southern Pacific Company toward getting freight from your territory through Ogden?

A. None whatever. We looked upon the gateway, or at least the connections up to Ogden, and other connections east of the Missouri River as competitors of the Sunset Route, and so treated them and they have so treated us.

Q. What were the methods pursued in solicitation in your territory? What was done to get the shippers to ship via the Sunset Route through New Orleans?

A. Well, I think the Southern Pacific was a very powerful road, and I think they were looked upon as such by the receivers in California and by the shippers in that territory, and we cultivated them; we tried to do everything we could for their interest and build up their confidence in our road. We traced their freight, we gave them reports on its movement and route, and in that way we kept them more than satisfied. And, again, the Southern Pacific Company in California is a very influential road. If there were any new industries or industrials being located out there, if they were on local territory requiring sidings the Southern Pacific Company naturally had to put them in. If they were around the city, around the Bay of San Francisco, and needed any sidings the Southern Pacific had to put them in. If there was any material to be moved from the east to complete these industrials and plants it was one of the first things our Southern Pacific solicitors did, to see that the business was routed to the greatest extent by our long haul.

Q. What was done in that period with reference to rates?

A. Well, there were times during that period when the rate situation was not altogether on a tariff basis. In other words, there was manipulation, manipulation resulting in—if I can so express it—pure and simple cutting of rates, and at the same time the Southern Pacific Company was never the instigator of any of the cut rates.

Q. What did it do, if anything, with reference to meeting rates then cut by their competitors to Ogden?

A. When we found that the cut-rate situation was on we made use of our position and then met it. We felt that we were justified in any cut rates we ever made.

Q. To be specific, suppose that the Southern Pacific Company learned that A. B., a shipper in Cincinnati, had shipped a carload via Ogden to California; what was the ordinary course? What did you do?

A. We would immediately notify our Pacific coast representatives, if it was controlled there, to prevail on that consignee to change to the Sunset Route.

Q. Suppose the routing was controlled by the consignor in your territory?

A. I should leave nothing undone to secure that business and have it changed to the Sunset Route. Failing to do so I would look upon it as lost and so would my superiors at that time.

Q. Was anything done by way of furnishing any special equipment in your territory for use through New Orleans and over the Sunset Route to California?

A. In the early nineties there were built by the Southern Pacific Company—I believe the exact number was, oh, fifty, or between 50 and 60—buggy cars, cars for the accommodation of buggies and furniture, of special dimensions to better accommodate that class of trade. Those cars were put into Ohio and Cincinnati trade exclusively through our New Orleans gateway. The cars were placed at my special disposal. If I needed any such equipment, I would have the Queen & Crescent place a requisition upon the Southern Pacific Company at New Orleans for the cars. They would be moved to

Cincinnati and there held subject to distribution on my order.  
562 That same applied with the Louisville & Nashville road, and in turn the equipment was placed by me at various manufacturing points and firms for return loading through the New Orleans gateway.

563 Q. During this period was freight moving from California via New Orleans to your territory?

A. Yes.

Q. In what volume?

A. In the season it was quite heavy volume. What I mean by "season" is that in the fall and early winter there was a very heavy movement of such products as canned fruits, dried fruits, lima beans, dried fish, and that class of commodities. Wine, likewise, was a heavy commodity.

Q. When you came into charge of the joint office of the Union Pacific and Southern Pacific in Cincinnati on the 1st of September 1901, was there any change in the policy laid down or carried out by you?

A. Yes; there was quite a radical change.

Q. What was the change?

A. Shortly after the consolidation instructions were issued to effect that a line was drawn from Cincinnati following the Ohio River down to the Mississippi River at Cairo; that the points there and south thereof should be worked preferentially by the New Orleans gateway. Secondly, by the Missouri River and Union Pacific—Ogden gateway. All territory north of that line and

564 points in California were to be worked preferentially by the

Union Pacific from the Missouri River through Ogden, by Southern Pacific Company to what we would call central California; points north of Mojave; and for territory south of Mojave, southern California, it would be Union Pacific and Salt Lake route to Los Angeles.

Q. Do you happen to bear in mind when the Salt Lake route was opened?

A. No; I haven't got the exact year. I think it was 1905 or 1906.

Q. Prior to those instructions of the fall of 1901, had you ever received any instructions to favor the Ogden gateway primarily on my freight, or secondarily on any freight?

A. No; we had not; we did not look upon the Ogden gateway, for my territory, as one that was to receive any of that business that could possibly be influenced through New Orleans.

Q. Have you a memorandum of various mileages affecting your territory?

A. Yes.

Q. Was that made up by you?

A. Yes; by my assistant, and checked over by me.

Q. And it is correct, is it?

A. Yes; that represents the short lines.

Q. The short line mileages?

55 A. Yes.

Mr. McCLENNEN. The petitioner puts in evidence, as petitioner's Exhibit No. 67, this table of mileages just referred to.

(The table referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 67, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. What is the natural and best route between your territory on the east and points in Nevada and California north of Mojave and Tehachapi on the west?

A. I would consider the channel to Chicago, any one of the various lines leading west to Council Bluffs; thence the Union Pacific to Ogden, and Southern Pacific Company to destination.

Q. Do I understand you that you are not aware of what company owned the rails west of Ogden?

A. I know that the Central Pacific line extending from Ogden to California is owned and operated by the Southern Pacific Company; that is the general knowledge I have.

Q. And in describing the line west of Ogden, is that the line which you mean?

56 A. That would be the Central Pacific line to California destinations.

Q. What is the comparative mileage to San Francisco, for instance, from Cincinnati via that line, and via the Sunset Line?

A. In round numbers, about 800 miles longer via New Orleans than via Omaha and Ogden to San Francisco.

Q. Looking at your table, exactly how many miles is it by the short rail line from Cincinnati to San Francisco?

A. To be exact, it is 764 miles shorter from Cincinnati to San Francisco via the Chesapeake & Ohio Railroad to Chicago; Chicago & Northwestern to Omaha; Union Pacific to Ogden, and Southern Pacific Company to San Francisco, making a total of 2,559 miles, as against Queen & Crescent, Cincinnati to New Orleans, 836 miles; New Orleans to San Francisco, 2,487 miles; total, 3,323 miles, the difference being 764 miles.

Q. Put in another way, after the freight has traveled 836 miles to get down to New Orleans, how much nearer to San Francisco is it than it was when it started?

A. Seventy-two miles.

567 Q. Mr. Gann calls to my attention that the term "Queen & Crescent" needs some explanation. What is the Queen & Crescent?

A. The Queen & Crescent is known as the Cincinnati Southern, Cincinnati to Chattanooga; Alabama Great Southern, Chattanooga to Meridian; and New Orleans and Northeastern, from Meridian to New Orleans. They compose the Queen & Crescent.

Q. Have you prepared a statement of the California carloads moving from your territory via New Orleans and Sunset Route, and via the Union Pacific and Central Pacific route, since September 1, 1901?

A. Yes.

Q. Is this the statement?

A. Yes.

Q. Was that made up under your supervision?

A. Yes; that is correct.

Q. When?

A. It has been compiled from year to year during 1901, 1902, 1903, 1904, 1905, 1906, and 1907.

Q. Does that correctly state the carloads going from your territory by those two routes?

568 A. Yes; and when I say "year", I wish to state that the years commenced on the date of the consolidation of my offices, September 1, 1901, which would be twelve months to September 1, 1902. Those were the twelve month periods which this represents.

Mr. DUNNE. From September to September?

The WITNESS. Yes; that is the way I made up my year.

Mr. McCLENNEN. This statement just referred to the petitioner puts in evidence as Exhibit No. 68.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 68, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Am I right in understanding that the first figure under the date in each column represents the number of carloads going from your territory via Ogden?

A. Yes.

Q. And the figure under it the number of carloads going from your territory via New Orleans and Sunset Route?

A. Via New Orleans and the other Texas junctions of the Sunset Route.

Q. It would make it all inclusive if I said going from your territory via El Paso to California, would it?

560 A. Yes.

Q. For instance, the year beginning September 1, 1905, were moved out of your territory via Union Pacific and Central Pacific 4,243 cars and via the Sunset Route 830 cars?

A. Yes.

Q. Have you any figures showing the eastbound tonnage?

A. No, sir.

Q. What can you say, from your general knowledge, as to the extent of it?

A. It was very heavy in seasons from central and northern California points. When the fruit and hop and wine season was on it was heavy by the Sunset Route.

Q. Have you a statement showing the number of carloads moving from your territory to California during the calendar year 1912?

A. Yes; I have it before me.

Q. Was that prepared under your supervision?

A. Yes.

Q. Does that correctly set forth the movement?

A. It does.

Mr. McCLENNEN. This statement just referred to petitioner puts in evidence as Exhibit No. 69.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 69, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Am I right that this shows that there moved to California via the Union Pacific from your territory in the year 1912, 2,356 cars?

A. Yes.

Q. Via El Paso or Deming, 1,239 cars?

A. Yes.

Q. Via New Orleans or Shreveport, 671 cars?

A. Yes.

Q. And via other junctions, enough to make up 4,647 cars?

A. Yes.

Q. And otherwise stating those same figures, 2,356 cars moved Union Pacific?

A. Yes.

Q. And 2,291 cars moved Southern Pacific Company and not through Ogden?

A. Yes.

Q. El Paso means delivery to the Southern Pacific Company at El Paso?

571 A. The Southern Pacific system at El Paso; yes.

Q. Deming means delivery to the Southern Pacific system at Deming, New Mexico?

A. Yes. That is another junction with the Santa Fe.

Q. New Orleans means the regular Southern Pacific route through New Orleans?

A. Yes.

Q. Shreveport means what?

A. Houston, East & West Texas down to Houston; thence Southern Pacific Company, the Houston, East & West Texas being part of the Atlantic system of the Southern Pacific Company, so considered.

Q. How many different commodities are there moving from your territory from time to time to California points in large quantities?

A. Oh, the carload commodities are very numerous and extensive, a great variety of commodities from my territory, one hundred or more carload propositions, and a multiplicity of less than carload commodities—innumerable.

Q. Since February 1, 1913, you have worked exclusively for the Ogden gateway on all California freight from your territory?

572 A. Yes.

Q. Have you a memorandum of carloads of freight from your territory moving to California recently in carload lots?

A. Yes.

Q. Was that made up under your supervision?

A. Directly so; yes.

Q. And does that correctly state the movement?

A. Yes.

Q. This, I understand you, includes things moving only in carload lots?

A. Yes; the carload proposition only.

Mr. McCLENNEN. The statement just referred to petitioner puts in evidence as Exhibit No. 70.

(The statement referred to was thereupon marked "Petitioner's Exhibit (Connor) No. 70, October 7, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. This statement which you had before you when answering a moment ago, Exhibit 70, I understand you is west bound only?

A. West bound only.

Q. This first column indicates the commodity?

573 A. Yes.

Q. And the numbers in the three columns indicate the number of carloads of that commodity moving in carload lots from your territory to California in July, August, and September, of 1914?

A. Yes.

Q. And the last column is merely the total of the three?

A. Yes.

Q. You now have no direct statistics, I assume, as to the movement of freight from your territory via New Orleans?

A. No, sir.

Q. From your general knowledge of the business in your territory, can you state with any certainty what is now moving via New Orleans and Southern Pacific Company to California from Cincinnati, and via the various routes to El Paso and thence Southern Pacific Company to California?

A. From Cincinnati and Ohio River points and south thereof there is a good business and it is quite extensive in tonnage in the aggregate, and is represented by a great many carloads. I know that from past experience in working the New Orleans gateway, as well

as my efforts at present to secure it for the Union Pacific, and 574 I know that the volume that is going through New Orleans is of quite some moment.

Q. In the period 1889 to 1901 did you have any knowledge as to Southern Pacific Company solicitation as to movement of freight from Pittsburgh to New Orleans and thence to California?

A. I had this knowledge, that as to every carload of freight that was forwarded from Pittsburgh, routed through Cincinnati or Louisville to New Orleans en route to California, our Pittsburgh agent advised me of it with a view of having it expedited through my territory and the city of Cincinnati en route to New Orleans. I had occasion to report to the Pittsburgh agency the arrival and passing of that carload at Cincinnati and reported to our New Orleans office in turn its arrival and passing Cincinnati en route to New Orleans.

Q. How did the tonnage passing that way from Pittsburgh territory to California compare with the tonnage from your territory during the same period?

A. It was much heavier, in my judgment.

575 Mr. DUNNE. What period are you speaking of?

Mr. McCLENNEN. 1889 to 1901.

By Mr. McCLENNEN:

Q. Can you inform us whether or not the rails from California via the Central Pacific, the Union Pacific, and eastern connections to Cincinnati are naturally competitive with those via the Sunset Route—New Orleans and thence to Cincinnati—using "competitive" in the sense of ability to carry freight between common territories?

A. They are decidedly competitive westbound, and I believe they are also eastbound, but not so much.

Q. With the rails of the Central Pacific Railroad and the rails of the Southern Pacific Railroad both under the control of the Southern Pacific Company, as you have observed it from year to year in business, has there been competition between the Central Pacific and the Southern Pacific, the one against the other, to get that business?

A. Not in all my experience working straight Southern Pacific Company there was not.

Q. What are a few of the important commodities moving in large quantity from your territory to California?

A. A commodity called Crisco—

576 Mr. DUNNE. What is Crisco?

The WITNESS. A substitute for lard, used in cooking, manufactured by Procter & Gamble Company in Cincinnati. It is a vegetable product, a by-product of cotton-seed oil. Whiskey, trucks, plate steel, galvanized iron, packing-house products, tin cans, automobiles, street cars, machinery, furniture, tile, paper, iron pipe, canned goods, wire, lamp chimneys, belting, fruit jars, bridge iron, road rollers—

By Mr. McCLENNEN:

Q. I will interrupt you. It is not necessary to make it comprehensive. What would the annual tonnage from your territory to California which you could and did secure either for the Southern Pacific via the Sunset line or the Union amount to?

A. I can answer that two ways. Take lean years and it would be much less than when business was good; but I think we have handled as high as 200,000 tons—175,000 to 200,000 tons of stuff, commodities, in a real good year.

Q. Do you have in mind what the average total revenue per ton would be on the freight moving from your territory to California points?

A. No, sir; I could not answer that with sufficient accuracy to go on record. It is a matter that I never handled in my office, as to the earnings of the commodities that moved.

Q. Take the territory in California north of the Tehachapi on the one hand and your territory on the other: If the freight was not artificially controlled by one route or the other by solicitation or otherwise, how much of it would naturally pass through the Ogden gateway and how much of it through New Orleans?

A. From the territories outlined I believe if you were to eliminate all solicitation on the coast as well as in the eastern territories that made of three years, by allowing the freight to seek its own channel—and I mean by that the routings over which it would be best cared for—I venture to say that 75 per cent of it would go through the Ogden gateway to Cincinnati territory.

Q. And how much over the Atchison or through New Orleans?

A. I think the other 25 per cent would then flow through the Atchison, Western Pacific, and the El Paso and New Orleans gateways.

Q. When did the Atchison, Topeka & Santa Fe Railroad become an important factor in the freight business between Central California and points east of the Missouri River?

A. If I remember correctly they went into San Francisco over their own rails about 1898 or 1899. That is subject to correction. And immediately thereafter they became quite an important factor in the westbound California traffic, but never to the degree that the Southern Pacific has been.

Q. It has appeared already in the record that the date to which we refer is May, 1899. Prior to that date what effect did the Atchison have upon the central or northern California freight and your territory?

A. By our system of checking up any car or cars that the Santa Fe have it was not very flattering to the agent in charge of the territory to let any single car even go on to the Santa Fe as far as Mojave. We immediately proceeded to issue adverse routing advice of cars delivered to the Southern Pacific at Mojave, and we would proceed to immediately look after the shipper, if it was controlled in the east, and they did the same in the west, to see that the thing was not repeated.

Q. Do you know over what route the peculiarly valuable freight from San Francisco, such as silks and teas from the Orient, now moves?

A. I do not care to and can not, from my own knowledge and belief, answer that question. There is no silk coming into territory, and what I know about it is, necessarily, hearsay.

Q. Do you know about the fruit traffic?

A. The deciduous fruits?

Q. Yes.

A. No.

Q. Do you know about the citrus fruits?

A. No. It is a commodity, I might say, that is never solicited by the local representatives in the eastern territory. To my knowledge and information it is a proposition that is controlled in the West very largely by the originating points of the business.

Q. In your connection with the business prior to 1901 did you observe any discrimination by the Southern Pacific Company against the Union Pacific Railroad on those commodities which could be influenced or controlled via the Sunset Route?

A. The same adverse routing reports that I mentioned in connection with the Santa Fe at Mojave were issued on freight reaching the

Union Pacific at Ogden, and we were expected to look after 580 and treat it as a lost proposition and to see if we could not get the futures for the longer haul, the Sunset.

Q. Was this occasional or systematic?

A. Systematic.

Q. Was it on the occurrence of observing particular shipments, or was it preconcerted?

A. Preconcerted.

Q. How long, as you observed it, stated in terms of months or years, did that systematic and preconcerted discrimination continue?

A. It continued up to the consolidation of the Union and Southern Pacific officers and railroads.

Q. By what methods was this systematic and preconcerted discrimination against the Union Pacific carried out?

A. On the arrival of the car, say, in the city of San Francisco, if it originated in my territory and traveled through Ogden, we had a prescribed blank that was filled out by our commercial or general agent, giving me the originating point, the name of the shipper, the commodity and the consignee, and how it was routed, with a further notation, with an interrogation point, as to why it moved that way, and what about the future cars; and that invariably brought forth correspondence, if there was more than one car to follow.

581 Q. Were you aware, in the course of your business, of the change in the course of freight from the Central Pacific rail which previously had gone over the Denver & Rio Grande eastbound before the merger?

A. No, sir; I am not familiar with that.

Q. But after you learned that a particular shipment had gone the way that you say, what methods did you pursue with the shippe

to get him to send no more by Ogden but to send it by New Orleans?

A. We would immediately call upon the shipper and learn if he had any further business to move. If it was controlled by him, I put forth my personal and greatest efforts to prevail upon him to make the change to the Sunset Route, frequently being able to point out to him the service that we had been able to give in the past, the dissatisfaction which he had obtained, both himself and his consignees & customers; and in that way frequently we could prevail upon him to, in turn, use the Sunset Route for any further cars.

Q. If it was controlled by the consignee what course did you pursue?

A. Our representation at destination—

Mr. BLAIR. I object to any statement by the witness about the representative at destination. He can not have personal knowledge of that.

By Mr. McCLENNEN:

Q. Proceed with your answer.

A. Our procedure would be for the agent at destination to pursue with the consignee any means or method at his command to prevail upon him to change the routing to the Sunset Route.

Q. Did you receive and transmit these instructions east and west from time to time?

A. Yes, sir; constantly.

Q. And did you have personal knowledge of the course that was being pursued at the time?

A. Oh, I was handling it personally.

(Whereupon an adjournment was taken until to-morrow, Thursday, October 8, 1914, at 10 o'clock a. m.)

#### NINTH DAY.

ROOM 606, FEDERAL BUILDING,  
Chicago, Ill., October 8, 1914.

Before Special Examiner Frank R. Hanna.

Present on behalf of the United States: Mr. Orr, Mr. McClellen, and Mr. Gann.

Present on behalf of the defendants: Mr. Herrin, Mr. Blair, and Mr. Dunne, for the Southern Pacific Company, et al.

WILLIAM H. CONNOR, the witness under examination at the taking the adjournment, resumed the stand.

Direct examination (continued) by Mr. McCLENNEN:

Q. Mr. Connor, prior to the consolidation, September 1, 1901, did Southern Pacific Company and its representatives, within your

knowledge, give to the Union Pacific Railroad Company and its representatives any, and, if so, what, assistance to secure freight via Ogden which could be secured for the Sunset Route between California points on the west and your territory, the Cincinnati territory, or the Atlantic seaboard territory on the east?

A. I can not speak for the Atlantic seaboard territory.  
584 From my own territory we exchanged no communications with them.

Q. Do the other connections of the Union Pacific Railroad Company afford its representatives any assistance in procuring freight via Ogden?

A. To the best of my knowledge they do.

Q. Will you state, by way of illustration, some of the railroads that assist in this way?

A. The Chicago & North Western; the Chicago, Milwaukee & St Paul; the Illinois Central; the Chicago Great Western; and the Chicago & Alton are roads that lend assistance constantly to the Union Pacific in the securing of freight traffic by their cooperation.

Q. You have spoken of the attitude of the Southern Pacific Company prior to the merger and during the merger. Let me now direct your attention to the period since February 1, 1913, and ask you whether, in view of the conditions and possibilities that have existed since that time, you have been able to form a judgment of what the settled policy of the Southern Pacific Company is to be, with respect to freight passing between your territory on the east and California territory on the west.

585 A. From my observance and information at hand, the Southern Pacific Company are giving the Union Pacific a limited amount, to a good extent, of their efforts for the working and interchange of business from territory north of Tehachapi, central California, and northern California; but, at the same time, I do not think or believe we are receiving the undivided support; and this largely attributable to the fact that other eastern representatives of roads connecting with the Southern Pacific Company at El Paso and other Texas junctions have their representatives in California making business north of Tehachapi, and I feel satisfied that they are receiving support from the Southern Pacific Company in California.

Q. As a practical matter, prior to the entrance of the Atchison, Topeka & Santa Fe into San Francisco, to what extent, if at all, was the Southern Pacific Company in control of the rate situation with respect to California transcontinental traffic?

A. To the best of my knowledge and belief they were in absolute control.

Q. What were the facts, so far as they came under your observation, which perfected that control?

A. The absence of competition.

Q. Up to 1905, when the San Pedro route was opened, was there any way, other than by the Atchison, by which freight could get into or out of California by rail, other than over the two lines the operations of which were controlled by the Southern Pacific Company; that is, the Central Pacific Railroad and the Southern Pacific Railroad?

A. It was possible to reach there, of course, via Portland.

Q. Was there any other way?

A. No, sir; no other.

Q. To what extent, if at all, did transcontinental freight reach California via Portland?

A. During my twenty-six years' connection with the Southern Pacific and Union Pacific Companies I never knew of a pound moving by the Union Pacific, Portland, and Southern Pacific to San Francisco.

Q. Prior to the opening of the Western Pacific Railroad in 1910, what extent, if at all, was the Union Pacific Railroad dependent on the Central Pacific Railroad for through service and through billings?

A. They were wholly dependent on them, being their only outlet.

Q. Was the same true with reference to through cars and through rates?

A. Yes, sir.

Q. Conversely, what means of exit did the Central Pacific Railroad have through Ogden from California?

A. They had two lines, the Rio Grande Western and connections with the Union Pacific and connections east.

Q. The Rio Grande Western has now become a part of the Denver & Rio Grande?

A. Yes, sir.

Q. And the opening of that route was prior to your entrance into business, was it not?

A. Yes, sir.

Q. To what extent, if at all, have the Northern Pacific Railroad and the Great Northern Railroad and the Canadian Pacific Railroad, as a practical matter, affected the California transcontinental business?

A. To California State none; to the territory north, such as the Puget Sound territory, such as they serve, they were very material factors.

Q. What is the average freight time from Cincinnati territory and from San Francisco via the Sunset Route and also via the Ogden route?

A. During my connection with the Sunset Route we were delivering freight in 14 to 17 days via New Orleans. At the same time in Missouri River-Union Pacific through Ogden we were delivering freight in 12 to 14 days.

Q. In the trip via New Orleans what, if any, methods were adopted to hasten the freight from your territory to California?

A. The Queen & Crescent, for instance, had a fast-freight schedule of 56 hours from Cincinnati to New Orleans. California freight was always handled by that through train. Every car that left Cincinnati our New Orleans office was so advised to reach out and 589 look after it and see that it was not detained in the yards at New Orleans; in the old days, when the Morgan Line ships from New York delivered their California cargoes at New Orleans, the Cincinnati freight, as a rule, was put in the California special freights that were made up for that cargo and sent through to San Francisco on expedited time, the very best schedule time that could be made.

Mr. DUNNE. Are you speaking of the time when the Morgan Line took the freight to New Orleans in distinction from the subsequent period when they took it to Galveston?

The WITNESS. I have reference to the time when the Morgan Line delivered the cargoes to New Orleans.

By Mr. McCLENNEN:

Q. Am I right in understanding you that to some considerable extent the Cincinnati territory freight was incorporated at New Orleans into trains that ran through to California without break?

A. Without break; yes. They were usually solid trains to California.

Q. What effect upon that arrangement did it have when the Southern Pacific began to take its New York freight through Galveston instead of New Orleans?

590 A. It proved that the time was a little longer, but not materially so. It was longer because at Houston it was usually picked up. If they had sufficient freight to make up a train it was put in a California train from Houston.

Q. You mean that it made the Cincinnati territory freight a little longer than it had been when it traveled through New Orleans?

A. Yes.

Q. The attachment of that freight at Houston to the trains for Galveston meant attaching it to trains that had traveled some miles or so from Houston?

A. Yes.

Q. I do not know whether you have in mind—if so, state it—when the Galveston route was opened?

A. I could not tell you the exact year now; it has slipped my memory just when they sent the vessels to Galveston with that California freight.

Q. The Southern Pacific Company's New York boats still ply to New Orleans also?

A. I understand they have semiweekly sailings to New Orleans and weekly to Galveston.

Q. Are these times which you have stated in your earlier answers applicable over all the period of your existence?

A. The schedule times?

Q. Yes.

A. No; I would say that during the latter periods our service improved, was shortened, was lessened.

Q. Was the relative time as between the Sunset Route and the Ogden Route about the same or different through the entire period?

A. I think there was an improvement shown by both routes.

Q. You have spoken now of this two or three days better time in Ogden than via the Sunset Route in the matter of schedule. What was the situation with reference to the actual day to day running of the trains? Was there the same two or three days or less advantage in it in the Ogden Route in the actual running of the trains?

A. I would say it continued day in and day out.

Mr. DUNNE. What period are you speaking of?

Mr. McCLENNEN. During the entire period of his experience with the road.

Mr. DUNNE. You mean from 1890 to the present?

Mr. McCLENNEN. Well, I think it was 1887.

Mr. BLAIR. To the present time?

Mr. McCLENNEN. To the present time.

Mr. DUNNE (to the witness). Is that the period you are covering? I think the record ought to show that.

Mr. McCLENNEN. Now, Mr. Dunne—

Mr. DUNNE. I will withdraw my inquiry. I do not think I should be interrupted, but I think the record ought to show.

By Mr. McCLENNEN:

Q. As you observed the running of trains coming from Chicago through your territory through Ogden and in the opposite direction, what did you observe as to delays in terminals or junctions?

A. Any unusual delays in terminals or junctions were usually caused by congestion of freight, precipitated at times also by climate conditions or storms, so that the congestions and delays were applicable very largely to all junctions at various periods, but there was nothing regular at all in that respect.

It was a matter, if it occurred, that the operating department did their utmost immediately to remedy.

Q. Can you inform us how frequently there was any appreciable delay—failure to keep the schedule—over the Ogden Route?

593 A. Not on that account I could not, because it occurred at such different times that I do not think I could answer that correctly or definitely.

Q. Are you speaking of a matter that occurred daily or weekly, monthly, or once a year?

A. The unusual delays that I have reference to would occur once a year. I would not say they occurred once a year either; there might be intermissions of months between occurrences. I think the last great big delay that was very serious occurred in 1907, when I believe there were big congestions in Chicago and St. Louis in the belts and yards, and there were big snowstorms that winter, and these delays were very serious, and that applied to freight routed by all routes.

Q. Do you bear in mind any occasion since then?

A. No; I can not say that I do, to give it in detail.

Q. Do you recall any occasions prior to that occasion?

A. Well, I have just cited some delays up north here and we caused them. I believe it was in 1912 we had trouble down in Louisiana, unavoidable trouble, on account of the Mississippi overflowing its banks; it broke the Southern Pacific line west of New Orleans and leaned and caused unavoidable delay and congestion. These are the two most recent and vivid delays that I have in view.

594 Q. This last one was on the line between New Orleans and El Paso?

A. New Orleans and Houston, over there in Louisiana and where.

Q. In these answers that you have been giving as to schedules in conformity to schedules and delays, how long a period have you been covering, from what time to what time?

A. First during the period of the consolidated agencies, when I was placed in direct contact by the handling of freight and schedules through both the New Orleans and Ogden gateways. Prior to that time, when I was handling the Sunset Route exclusively, I naturally made it my business to know what schedule times were being observed by the Ogden gateway.

595 Q. And this last answer carries you back to what date?

A. 1887 to 1901; that period.

Q. Apart from rates and service, what is or are the important elements determining the routing of freight?

A. My experience in the Cincinnati territory, where the freight was controlled there, was that it was altogether personal solicitation of the man.

Q. How effective have you found solicitation to be in directing the course of the movement of the freight?

A. I think the freight solicitation, particularly if backed up with a great big powerful road, like I was with the Southern Pacific Company, for instance, is an important factor.

Q. Is there any more important factor than that?

A. Well, we brought pressure to bear in California through the waivers at that time and the consignees—brought things to bear upon them that made it, I think, to their interest to favor us with business that might not have been done otherwise.

Q. As between the initial carrier, the connecting carrier or carriers, and the delivering carrier, the solicitation of which of the three is the most important in directing the routing of the freight?

A. I always thought that it was the terminal line. That was my experience.

Q. And how, as between the initial and the connecting, in relative importance?

A. I do not believe the initial line, on through freights to the Pacific coast, has ever attempted to show any partiality; and it was up to one of the many intermediate lines to either work with representatives of the delivering line or with the shipper, in whichever case the routing rested, at destination or originating points.

Q. What was the situation in this respect with regard to eastbound California transcontinental freight?

A. On eastbound California goods, such as we handled very largely into my territory, consisting of fruits, hops, wine, and beans, a Pacific coast representative I was in contact with the wholesale dealer or the broker or the warehouse or anyone else, either one or that might have a control or express a preference for the routing of their goods, and prevailed upon them to give me, for filing with the consignor, or issue to them direct, routing instructions on behalf of the route that I used to designate to them, always giving them consideration for the terminal delivery that they might prefer; and I would then, for the New Orleans route, divide that business preferentially Q. & C., Louisville & Nashville, and Illinois Central; and that through the Ogden-Omaha branch would be divided between the Chicago & North Western,

Chicago, Milwaukee & St. Paul, Illinois Central, and the delivering line preferred, Chicago to destination.

Q. In what way, if at all, is the solicitation of freight made of service to the shipper?

A. It is a very important factor nowadays.

Q. What, if anything, does it include that is of help to him?

A. Well, there is a lot of this stuff that is purchased and sold on a declining or rising market, and there is a great deal of money tied up in a carload of freight—dried fruit, for instance—and the consignor naturally wants to get that freight to destination as quickly as possible, and thereby receive his money for it with as little delay as possible.

Q. What, as a practical matter, do the solicitors do to bring about the result and to assist the shipper?

A. I am pointing out to them the fact that we have got the 598 shortest, quickest, and best route from California to my territory, and have been quite successful in impressing upon them that that is the fact, and have succeeded in getting a great deal of their business routed that way.

Q. Do the solicitors take any part, either personally or through passing it on to other employees, in tracing the shipments to their destination, notifying the shippers and making provision before shipment by furnishing cars and otherwise?

A. Yes, sir. Those are accommodations that they appreciate very much, and a solicitor that makes it a point to trace freight cars kept his patrons advised of its whereabouts in transit and final delivery is considered very useful and beneficial to the shipper, and on such satisfactory service and information it is made pretty easy for him to call again and get more freight.

Q. Would the release of the Central Pacific road from the control of the Southern Pacific—controlling also the Southern Pacific Railroad and the Sunset Route—produce, as a practical matter, a competition between the Southern Pacific Railroad and the Central Pacific Railroad on transcontinental California business?

A. The Central Pacific would immediately, then, become an independent line, officered with president, vice president, general manager, freight traffic manager, auditor, purchasing department, and on down in the lesser capacities to freight solicitors all of whom would have a reputation to maintain and a record to make. Their entire influence and efforts would be exerted constantly in behalf of the Central Pacific road. The industrial and commercial interests served by that line would receive one hundred per cent of their efforts and all of the important cities and towns and territories served by the road would benefit to the same extent.

Q. What effect would this have upon the tonnage of the Union Pacific Railroad?

A. I believe it would have a tendency to show a decided increase in a short time after the organization was effectively working.

Q. Would this separation reduce the accommodations to the shipper?

A. To the contrary, I think they would not only be as good as they are to-day, but there would be every incentive to improve them.

Q. As a matter of practical railroading, what effect upon the improvement or injury to service does competition have?

Q. A. I think competition is the foremost factor in stimulating service, and that were it not for competition the service would be down to a minimum.

Q. Does it have any, and if so what, ultimate effect upon rates?

A. Competition most certainly has an effect upon both rates and classifications, and always will have. There are times when the interests of the competing line would be better served if they were in a position to make their classification and rates unhampered; so I think it would have a very decided influence over the making of rates.

Cross-examination by Mr. DUNNE:

Q. Mr. Connor, will you give me again the year when you began your service as Cincinnati agent of the Southern Pacific Company?

A. Commercial agent, Mr. Dunne, since April 1, 1889.

Q. And you continued in that capacity without interruption from April 1, 1889, until some time in 1901, was it?

A. To be exact, they consolidated the offices September 1, 1901.

Q. And at that time you became the consolidated agent?

Q. A. The general agent.

Q. The general agent, still at Cincinnati?

A. Yes, sir.

Q. And you continued in that capacity from September, 1901, until some time in 1913 or 1912, was it?

A. 1913, Mr. Dunne; February 1 the separation took place.

Q. Then on the 1st of February you became the agent at Cincinnati of the Union Pacific?

A. Yes, sir.

Q. And you have been continuously in the employ of the Union Pacific in that capacity at that place?

A. Yes, sir.

Q. I think I understood you to say that Pittsburgh was not a part of your territory as general agent resident at Cincinnati?

A. It never has been.

Q. Did your Cincinnati territory extend as far north as the shore of Lake Erie?

A. Always.

Q. And, to identify it by some familiar points, did it include Cleveland and Toledo, for example?

A. Yes.

602 Q. I suppose it also included Columbus and Indianapolis?

A. Yes, sir.

Q. Columbus and Indianapolis are rather to the south and proximate to Cincinnati in distinction from Toledo and Cleveland upon the north at the shore of Lake Erie?

A. Yes.

Q. Was Detroit also in your territory?

A. No, sir.

Q. Where is Detroit situated geographically in reference to Toledo?

A. Let me perhaps correct you and correct myself, Mr. Dunne—

Q. By all means.

A. You asked if Detroit was in my territory. It was in my territory while I was straight Southern Pacific representative, and after the merger of the offices it was taken away from me.

Q. Where is Detroit situated geographically with reference to Toledo?

A. Sixty miles due north of Toledo.

603 Q. And during your incumbency as general agent of the Southern Pacific Company resident at Cincinnati, prior to 1901, was the trend of the business from Detroit, Cleveland, Toledo, Indianapolis, and such points towards the New Orleans gateway, so far as you worked it preferentially?

A. Yes, sir; so far as I worked it preferentially.

Q. Did that business move to any considerable extent during that period out of Detroit towards the New Orleans gateway?

A. No, sir.

Q. It did not?

A. It did not.

Q. It moved in large by the northern gateways?

A. Yes, sir.

Q. During that period you were an active and vigorous solicitor for the New Orleans gateway, were you not?

A. I am afraid you flatter me a little, Mr. Dunne.

Q. I do not wish to flatter you at all, Mr. Connor.

A. Well, yes; I tried to be active.

Q. I understood you to say yesterday that you were for the New Orleans gateway first, last, and all the time?

A. Yes, sir.

Q. Why was it, under those circumstances, with your activities and your energies in behalf of the New Orleans gateway, that the business of Detroit in large moved by the northern gateways?

A. The shippers preferred it the other way.

Q. Why did the shippers prefer it the other way?

A. They looked upon it as too far north to send via New Orleans from Detroit.

Q. And you did not succeed by your solicitation in changing the attitude of the shippers, so far as the large movement from Detroit was concerned?

A. I never knew of this large movement that you speak of from Detroit.

Q. I mean relatively speaking, of course.

A. Yes. No, sir; I did not change it.

Q. What were the considerations that moved the shippers to prefer the northern route and which gave the business its trend northward instead of southward by the New Orleans gateway?

A. The western connections had local representatives in Detroit; the manufacturers were located on the lines that had no interest in the Toledo-Cincinnati gateway. They had, to the contrary, their sole interest in the long haul through Chicago and St. Louis. The influence brought to bear by those representatives in the solicitation outweighed that which I was able to bring upon them in behalf of the New Orleans gateway.

Q. What did you mean by saying that Detroit was too far north?

A. That last answer will answer that.

Q. In other words Detroit was too far north to be within the sphere of your influence, if I may so express it?

A. Yes.

Q. Can you give any estimate, approximate or rough, as to the percentage of Detroit business during your ten years incumbency as Cincinnati agent that moved by the New Orleans gateway in comparison with the northern gateways?

A. In view of my explanation that I did not succeed in securing freight from Detroit I do not think it amounted to anything at all.

Q. Now, taking Cleveland. That was within your territory, as I understand it?

A. Yes.

Q. And was worked by you preferentially and wholeheartedly for the New Orleans gateway?

A. Yes.

Q. What were the principal rail lines out of Cleveland between 1890 and 1901?

A. The same lines that there are to-day.

606 Q. Mention them, please.

A. The Lake Shore & Michigan Southern, the New York, Chicago & St. Louis, the Pennsylvania Road and the B. & O. Rail road; those are the four principal ones.

Q. Where did those four railroads meet these southern lines going from Cincinnati territory to the New Orleans gateway?

A. Both Cincinnati and Louisville.

Q. That is upon the Ohio River, is it not?

A. Yes.

Q. Did these principal lines out of Cleveland, for example, to the Chicago and St. Louis gateways? Take the Pennsylvania for example?

A. The Pennsylvania did, the Lake Shore did, the Nickle Plate did, and the B. & O. did, and the Big Four did, in, I might call a roundabout way.

Q. Was the haul for these initial lines radiating from Cleveland to the Chicago & St. Louis gateways, as compared with the other haul to the Ohio River gateways, was that their long or short haul?

A. Cincinnati would be their short haul.

607 Q. Did these initial lines prefer the long or short haul upon that business?

A. The line that I worked preferentially, the short haul.

Q. What line was that?

A. The Big Four—Cleveland, Cincinnati, Chicago & St. Louis.

Q. What about the other lines?

A. It did not have a great deal to do with the other lines.

Q. Will you say, with your experience of business in that territory, that these three other lines did not prefer their long haul to Chicago and St. Louis gateways on Cleveland business?

A. They preferred their long haul; yes.

Q. They preferred the long haul?

A. Yes.

Q. Was that a casual preference for the long haul, or a systematic preference?

A. Why, it would be a systematic preference.

Q. Was it an accidental preference or a preconcerted preference?

A. For those lines leading to Chicago and St. Louis?

608 Q. Yes.

A. No accident in it at all.

Q. Is it anything unusual in railroading that a carrier should prefer its long haul as against its short haul?

A. No; not that I am aware of.

Q. What were the principal lines—take Cleveland business or other business north of the Ohio River; what were the principal lines to the New Orleans gateway from the Ohio River?

A. The Queen & Crescent, the Louisville & Nashville, and a line that was formed from Cincinnati to Louisville, known as the B. & O. to Louisville, thence Illinois Central to New Orleans. Those were the three competing lines between Cincinnati and New Orleans.

Q. And you worked principally, as I understood you, with the Queen & Crescent?

A. Yes.

Q. Was there any movement southbound of business originating in Cincinnati territory by Texas junctions other than New Orleans during the period from 1890 to 1901?

A. Very little, Mr. Dunne. If you will let me correct that—  
609 in so far as the El Paso gateway enjoyed some of that business; that is, through the St. Louis to El Paso lines channel.

Q. Just mention those lines a little more definitely.

A. The Gould Line from St. Louis.

Q. How did the Gould line from St. Louis reach the Texas junctions?

A. Over the St. Louis, Iron Mountain & Southern division of their road. I believe it was Texarkana or Fort Worth—make it Fort Worth; thence Texas Pacific to El Paso.

Q. When was the Rock Island line opened to El Paso?

A. I do not know the exact year.

Q. Just approximately?

A. I believe it is a matter of record here, if you want it.

Q. We can prompt you; it was about 1902.

A. I should say about 1902 or 1903.

Q. Has that line been opened and doing business since that time through El Paso junction?

A. Yes.

Q. And from 1890 to 1902 the Gould line was operating Texas junctions through Fort Worth and Texarkana, and since 1902  
610 uninterruptedly the Rock Island has been operating through El Paso, has it not?

A. Yes; I so understand.

Q. I call your attention, just for a matter of brief explanation, to Exhibit No. 66 and the expressions in this exhibit of business handled from the territory of W. H. Connor, commercial agent. Those are expressions by way of carload, are they not?

A. Yes.

Q. Have you any accessible data by which these carload expressions may be rendered into terms of tonnage?

A. No, sir.

Q. By the way, where did you get the data, or where are the data from which these exhibits were compiled?

A. They were compiled in my office at the time the business moved and from the records we were then keeping of carload freights.

Q. Where are those records now?

A. I don't know.

Q. Did I understand you that this Exhibit 66 was one of the files of your office and is as old as the year 1899?

A. Yes.

Q. So that you have withdrawn these from the files of 611 your office for the purposes of this case?

A. I do not know why it was not destroyed; but this record was kept, and knowing I was coming up here on this case I looked this up.

Q. I do not think you get my mind about that. My mind is simply this, that the data behind this statement are not now available or accessible to you?

A. I should say not.

Q. You do not know of their whereabouts?

A. No, sir; if they are in existence, I know of their whereabouts.

Q. Where would they be?

A. In the storeroom at Cincinnati.

Q. At Cincinnati?

A. Yes.

Q. And accessible to you?

A. Oh, yes; they would be naturally.

Q. So that there would be no objection to our having access to those records?

A. No, sir; you are perfectly welcome to them.

Q. I notice the exhibit is headed "Ten years' statement of 612 business handled from territory of W. H. Connor, commercial agent." That means, of course, Cincinnati territory?

A. Oh, yes.

Q. Does it mean business handled exclusively through New Orleans?

A. Yes.

Q. Does it include any business that was handled through El Paso?

A. Not in the sense that it did not go through New Orleans. Every carload was delivered to the Southern Pacific Company at New Orleans.

Q. So that this exhibit does not indicate what business, if any, passed through the El Paso gateway which did not go through the New Orleans gateway?

A. It does not include it; no.

Q. Does this statement include business to California as a whole?

A. Yes.

Q. Is any distinction made in this statement between northern and southern California?

A. No, sir.

Q. I notice also in this statement certain merchandise cars are listed?

A. Yes.

Q. Does that mean anything more than that certain shipments of merchandise were consolidated into carloads and shipped in that way?

A. Our modus operandi was to solicit this merchandise from points north of the Ohio River as well as Cincinnati and concentrate it there, load it into a solid car for California, and it was then despatched, without further breaking of bulk at New Orleans, to destination.

Q. Does this statement indicate how much of the business handled originated in Cincinnati on the Ohio River and south and how much originated north of the Ohio River?

A. The statement does not so indicate.

Q. Does this statement indicate to what points these merchandise cars were consigned?

A. We billed all of them on San Francisco or Los Angeles; that was a billing matter. The cars contained freight for all destinations in southern California, and the billing would indicate.

Q. Does this statement indicate the ultimate destination of that merchandise freight, whether from Los Angeles as the point of departure or from San Francisco?

A. No, sir; it does not.

Q. I notice also on this statement a compilation of carload business moving to Texas, New Mexico, and Arizona and other southern territory exclusive of California. That was compiled, I apprehend, in the same way, was it not?

A. Yes, in the same way from the same records.

Q. I call to your attention, I may want to ask you a question or two about Exhibit 68, which is headed "California carloads, September 1st, 1901", and proceeds year by year to and inclusive of the year 1907. Was that statement compiled in the same way as the exhibit we have just been speaking about?

A. Yes.

Q. Where are the data from which this statement was made up? Are they accessible or available?

A. If they are in existence they are, Mr. Dunne.

Q. Can you ascertain for us whether they are in existence, and advise us?

A. Yes; I will be very glad to do so.

Q. I notice this statement stops at 1907; was that because 615 the statement, as you found it in your office, did not extend beyond 1907?

A. Yes.

Q. So that for the period between 1907 and the present time you have no such statement or data?

A. Up to the last year; we had it for 1912. You will find it.

Q. We will come to that later?

A. Yes.

Q. But year by year from 1907 to 1914 you have not made up any statement similar to this?

A. With that one exception.

Q. With that exception?

A. Yes. When I say it was not made up, that we did not make it up—it was made up, but what became of it I do not know.

Q. At all events you have not got it?

A. I haven't it.

Q. And it is not producable so far as you are concerned?

A. No, sir.

Q. When was this memorandum terminating in 1907 made up? Was it made up about 1907?

616 A. At the close of 1907.

Q. Now, then, bearing this exhibit in mind and calling your attention to the heading, "California carloads", does this exhibit refer to the business of northern California alone, or to southern California alone, or is it designed to exhibit business moving in California as a whole?

A. To California as a whole.

Q. Calling your attention now to the tabulation in this statement against the initials S. S., I suppose that means Sunset?

A. It signifies "Sunset."

Q. I notice that for the years 1901 to 1907, inclusive, there is no specification of carload movement for each year against the Sun; does this statement refer exclusively to carload business moving by the New Orleans gateway?

A. Mr. Dunne, following 1901 there were divisions of rates in California put into effect through the Shreveport gateway, through north Texas junctions, and through, I believe, Alpine, but I am not positive on that; and that S. S., Sunset, represents all cars that reached some portion of the Atlantic system through one of the different gateways.

617 Q. Does it include carload business that reached the Atlantic system through the El Paso gateway?

A. No, sir.

Q. So that this statement does not show or disclose the business that would move through the El Paso gateway via the Rock Island?

A. No, sir.

Q. Have you any means accessible to you of indicating what that carload movement was?

A. It is made up of all classes of commodities. Oh, you mean the Rock Island?

Q. Have you any means, supplementing this statement, of showing the carload business that moved through the El Paso gateway over the Rock Island as a connection at El Paso?

A. I have no knowledge whatever of Rock Island movements.

Q. After the Rock Island was opened in 1902 or 1903 did you receive reports of business passing through the El Paso gateway coming from the Rock Island?

A. No, sir.

Q. You received no reports of that business?

A. No, sir.

618 Q. Then, so far as you are concerned, you are not in a position to state the carload business or furnish us with the carload business up to 1907 that moved off the Rock Island through the El Paso gateway?

A. No more than I could tell you what moved over the Santa Fe.

619 Now, then, between 1901 and 1907, during those years, for what gateway was the Union Pacific-Southern Pacific preferentially working on this business?

A. From points north of the Ohio River preferentially Missouri River, Union Pacific, Ogden, and Southern Pacific.

Q. And for points north of the Ohio River?

A. For points on and south of the Ohio River preferentially through New Orleans.

Q. And for business having a destination in southern California how did you work the business preferentially?

A. What territory?

Q. Business originating in Cincinnati territory and for destinations in southern California.

A. In Cincinnati territory north of the Ohio River southern California business was preferentially worked by Union Pacific to Ogden and Salt Lake route to destination.

Q. When was that Salt Lake route opened?

A. You may correct me on this—1904, was it?

Q. 1905. Now, on business originating at Ohio River and points south the business was routed preferentially by the southern gateway, was it?

A. Yes.

620 Q. And whether that business had destination in southern California or northern California made no difference?

A. It made no difference, and all this routing was in conformity with instructions emanating from the traffic officials.

Q. In so far as this exhibit relates to business moving since the opening of the San Pedro route in 1905, does it represent under the caption "U. P." business that moved principally and preferentially by the San Pedro route in distinction from the detour by way of Ogden and Sacramento?

A. On the opening of the Salt Lake route instructions carried that the southern California business should move that way, and it was only in an exceptional case that it did not move that way.

Q. How does that route compare with the route by way of Ogden, Sacramento, and over the Tehachapi Mountains into southern California?

A. Well, from Ogden it would have the comparison of being about 400 miles shorter by the Salt Lake route than by Sacramento.

Q. Has it been consistently the preferential route of the 621 Union Pacific on southern California business since it was opened?

A. Yes.

Q. I call your attention to Exhibit 69, which is headed "January 1st, 1912, to December 31st, 1912." This is a carload statement, is it not?

A. Altogether.

Q. And in the recapitulation the carload business attributed to the Southern Pacific Company includes as well all other Texas junctions as the New Orleans gateway, does it not?

A. Yes; New Orleans; and Shreveport, you will notice, is added in there.

Q. I understand; but I notice other Texas junctions, besides.

A. Yes; I mention Shreveport because that is a Louisiana point.

Q. Now, Exhibit No. 70 appears to be a compilation of commodities moving in carloads to California from Cincinnati territory for three months of the year 1914; you recall that, do you?

A. Yes.

Q. Have you any other compilation or figures over and above this exhibit?

622 A. No, sir.

Q. This exhibit refers to carload movement of those commodities into northern California, does it not?

A. The State of California.

Q. Is it not exclusive of Los Angeles and southern points?

A. No, sir.

Q. What is the meaning of this statement—possibly it may be my misunderstanding—"Carloads to California, exclusive of Los Angeles and southern points, from Cincinnati territory"?

A. I stand corrected; it excludes Los Angeles; it is exclusive of Los Angeles.

Q. It is exclusive of Los Angeles and southern points?

A. Yes.

Q. Have you a statement similar to this and applicable to Los Angeles and southern territory in California?

A. I have not, but it is available.

Q. It is available?

A. Yes.

Q. It can be prepared?

A. It can be compiled and prepared.

Q. Would you have any objection to compiling a similar statement for southern California territory and furnishing it to us?

A. I will compile it and show you southern California as well as central California.

Q. If you please.

A. I will try to do that; it was an oversight to exclude Los Angeles and make it refer to central and southern California only.

Q. What are the western connections of the primary lines operating out of Cincinnati territory to the Chicago and St. Louis gateways between 1890 and 1901 and since.

A. Well, I will take Cincinnati and St. Louis first; the Baltimore & Ohio, the Cleveland, Cincinnati, Chicago & St. Louis, and the Pennsylvania Company were the three roads extending from Cincinnati to St. Louis over their long haul.

Q. You are dealing now with the St. Louis gateway?

A. Yes.

Q. What were the western connections then?

A. To Kansas City, Mr. Dunne?

Q. To Kansas City and beyond.

A. From St. Louis to Kansas City, the Chicago & Alton, the Missouri Pacific, the Wabash, the Rock Island, the Frisco Line, the Missouri, Kansas & Texas, and the St. Louis, Iron Mountain & Southern. That is all.

Now, then, Cincinnati to Chicago—

Q. One moment; what are the connections of those lines west of Kansas City and making for California destinations?

A. Those lines terminating at Kansas City have western connections such as the Union Pacific, the Chicago, Rock Island & Pacific, the Atchison, Topeka & Santa Fe, and the Missouri Pacific.

Q. To what points west do those lines go that you have just mentioned?

A. They have western termini at Denver, Colorado Springs, Pueblo, Ogden, Oakland, San Francisco, Los Angeles, Deming, and El Paso.

Q. With what lines do they connect at those western termini for California destinations?

A. Those through Ogden and Salt Lake connect with the Southern Pacific and Western Pacific; those at El Paso with the Southern Pacific Company.

625 Q. Is there any other line through Salt Lake or Ogden with which they connect besides the Southern Pacific and Western Pacific?

A. Not to my knowledge.

Q. How about the San Pedro line?

A. I beg pardon—that also.

Q. That should be included?

A. Yes; that should be included.

Q. Take the primary lines from Cincinnati territory making for the Chicago gateway; will you name those lines?

A. The Cleveland, Cincinnati, Chicago & St. Louis; the Pennsylvania Railroad; the Chesapeake & Ohio of Indiana; the Cincinnati, Hamilton & Dayton; and the Monon Route—those form the Cincinnati-Chicago lines.

Q. And with what lines at Chicago do they make connections for the farther transit west?

A. The Atchison, Topeka & Santa Fe first; the Chicago, Rock Island—

Q. If I may interrupt: Has the Atchison, Topeka & Santa Fe line of its own all the way from Chicago to southern and northern California?

A. To both San Francisco and Los Angeles.

626 Q. Excuse my interruption. Proceed.

A. The Atchison, Topeka & Santa Fe; the Chicago, Rock Island & Pacific; the Chicago, Burlington & Quincy; the Chicago & North Western; the Chicago, Milwaukee & St. Paul; the Illinois Central; the Chicago Great Western; and the Chicago & Alton. Those are all through Missouri River lines, and extending beyond the Missouri River, connecting with them—

Q. Did you mention the Wabash?

A. Include it if I did not, please.

Q. To what points west do those lines proceed?

A. I beg your pardon?

Q. What are the western termini of those lines out of Chicago?

A. Missouri River points.

Q. Missouri River points? For example?

A. For example, Council Bluffs, St. Joseph, and Kansas City.

Q. What are the lines out of the Missouri River points with which they connect for California points?

A. The Union Pacific. That is the only one.

Q. Are there any others?

A. No, sir.

Q. The Union Pacific as far as Ogden?

27 A. Yes, sir.

Q. That is, from Omaha and Kansas City?

A. Yes, sir.

Q. Is there any other line out of Kansas City or Omaha that goes west besides the Union Pacific?

A. I mentioned those before, but I will repeat them: The Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Missouri Pacific; the Atchison, Topeka & Santa Fe.

Q. The Missouri Pacific is affiliated with the Denver & Rio Grande?

A. Yes; it is known as one of the Gould lines.

Q. Where is the western terminus of that Gould line?

A. Let me understand you, please. Do you mean the Gould line extended through to California?

Q. No; as far as Ogden.

A. The Missouri Pacific proper extends to Pueblo and there connects with the Denver & Rio Grande, another Gould property, to Salt Lake and Ogden.

Q. And at what point does it connect with the Western Pacific?

28 A. Salt Lake City.

Q. The Missouri Pacific, the Gould line, also has a line by the south, through the Texas gateways, into California, has it not?

A. Yes, sir.

Q. So that the Gould line has two lines, one by the north and one by the south, on California business?

A. Yes, sir.

Q. As I understood you, between 1890 and 1901, you, as the Southern Pacific agent in Cincinnati territory, were working the business referentially, or, to use your own expression, "first, last, and all the time" for the New Orleans gateway?

A. Yes, sir.

Q. Since 1901 and until February, 1913, how did you work the business preferentially?

A. Per instructions, the territory was divided; that portion of it from Cincinnati to Cairo along the Ohio River, points thereon and south thereof, was worked preferentially Sunset Route; that portion of the territory north of the Ohio River was worked preferentially Missouri River, Union Pacific, Ogden, and Southern Pacific Company.

Q. Is that the significance that attaches to this first exhibit  
629 that was offered in evidence on your testimony yesterday, showing the earnings by the gateways?

A. I do not know that I touched upon earnings.

Q. Divisions, I mean, by the gateways.

A. Yes, sir.

Q. That was the significance of it?

A. Yes, sir.

Q. Then, as I understand you, from 1901 until what has been called here the "unmerger" the business north of the Ohio River was worked preferentially by you as the joint agent for the northern gateways?

A. Yes, sir; to central and northern California via Ogden and the Southern Pacific to southern California via Ogden and the Salt Lake route.

Q. Since 1912, or February 1, 1913, the Southern Pacific and the Union Pacific agents have been separate personalities in that territory, have they not?

A. Yes, sir.

Q. With respect to the Cincinnati territory business north of the Ohio River, do you know how the Southern Pacific agent has preferentially worked that business since February, 1913?

630 A. I think he has shown his preference for the Ogden gateway.

Q. And with respect to business originating on the Ohio River and south of the Ohio River, he has preferred the New Orleans gateway?

A. Naturally.

Q. Taking that same Southern Pacific agent, since February 1913, and upon business originating in the Cincinnati territory and having a destination in southern California, how has he preferentially worked that southern California business?

A. He would have many gateways to work it, and many connections to work it with.

Q. Do you know whether he has preferentially worked that southern California business since February, 1913, by the New Orleans gateway?

A. I would think that competition would force him to work it preferentially through El Paso gateway connections.

Q. What competition?

A. The fact that the service to southern California, I think, is far better through St. Louis and Chicago and El Paso or Ogden than it would be possible to procure through New Orleans.

Q. Then the superiority of the service, as between St. Louis and New Orleans, would in your judgment force him to work it by the El Paso gateway in distinction from the New Orleans gateway?

A. It would be a factor, yes; but not altogether the controlling factor on all shipments.

Q. Well, you have answered my question, Mr. Connor. What would the competition be that he would be met with from the Union Pacific on that business into southern California? By what route?

A. Union Pacific, Ogden, and the Salt Lake route to destination.

Q. Did the Union Pacific solicit or seek to work any business preferentially by the Ogden-Sacramento gateways in contradistinction from the San Pedro?

A. During what period? Any period?

Q. After the San Pedro had gone into operation as a working line.

A. In accordance with instructions I had, it was not so worked in Sacramento.

Q. Which is the better line on southern California business—the line by way of the Union Pacific and Salt Lake, or by way of the Union Pacific with the detour by way of Ogden and Sacramento and over the Tehachapi Mountains?

A. The Ogden and Salt Lake Route.

Q. Does any business, to any substantial extent, originating in Cincinnati territory and having destination in southern California, move by the circuitous route through Sacramento and over the Tehachapi, as against the San Pedro Route and the southern route that you have been speaking of?

A. A very, very small volume, if at all.

Q. Do you recall when the Santa Fe got into San Francisco? It was 1898 or 1899, was it not?

A. I think it was 1898; the latter part of 1898 or 1899, I have forgotten which.

Q. Since that time has the Santa Fe been an important factor in the transcontinental business?

A. So considered; yes.

Q. You so consider it, do you not?

A. Yes.

Q. I call your attention to the following statement made by you yesterday at page 577:

“Q. Take the territory in California north of the Tehachapi on the one hand and your territory on the other: If the freight were not artificially controlled by one route or the other by solicitation or otherwise, how much of it would naturally pass through the Ogden gateway, and how much of it through New Orleans?”

633 “A. From the territories outlined I believe if you were to eliminate all solicitation on the coast, as well as in the eastern territories, that inside of three years, by allowing the freight to seek its own channel—and I mean by that the routings over which it would be best cared for—I venture to say that 75 per cent of it would go through the Ogden gateway to Cincinnati territory.”

Calling your attention to that testimony, I will call your attention to the further statement that you made on the same page:

“Q. And how much over the Atchison or through New Orleans?”

“A. I think the other 25 per cent would then flow through the Atchison, Western Pacific, and the El Paso and New Orleans gateway.”

Calling your attention to that testimony, I would like to ask you how much of that other 25 per cent you would assign to the Atchison, Topeka & Santa Fe?

“A. At the time the Santa Fe got into San Francisco they were without terminals, they were without branches, they were without anything except two streaks of rails; they had no standing in California to speak of, and I do not think that they were in a position to control or influence more than a very small percentage of the business over their rails. If the business was left to itself, on account of the Southern Pacific Company's long and original standing, covering the valleys as they did and originating the business they did, I do not think there is any question of doubt but what the business would naturally have moved over that line and it would not have gotten on to the Santa Fe rails at all, under any conditions.

Q. Do you recall making the following statement yesterday, page 578, speaking of the Santa Fe:

“A. If I remember correctly they went into San Francisco on their own rails about 1898 or 1899. That is subject to correction.”

“A. Yes.

Q. (Continuing reading.) “And immediately thereafter they became quite an important factor in the westbound California traffic, but never to the degree that the Southern Pacific has been.” Is that a correct statement?

“A. They became an important factor in the solicitation of westbound business. There is no statement there that they got

635 Q. Now, I will ask you again the question: This is the

of grace 1914. In the year of grace 1917, three years from now, how much of that 25 per cent that you spoke of yesterday would you assign to the Atchison, Topeka & Santa Fe?

A. That 75 per cent and 25 per cent business I am satisfied would continue, and the Santa Fe would divide it the best they could with the Western Pacific.

Q. That still does not answer my question. I am anxious to pursue your analysis a little further. Again, I ask you, Mr. Connor—please do not think I am pertinacious: How much of that 25 per cent in the year 1917, in your judgment, would be assignable to the Santa Fe?

A. Twenty per cent.

Q. The other five per cent, then, would be divisible among the other transportation routes that you mentioned, would it not?

A. No, sir; I do not think so. The other five per cent would fall to the Western Pacific, if it fell to anybody. I do not think it would be possible for any El Paso gateway or any New Orleans gateway or any Texas junction gateway to enjoy or participate in that division of business that would be created by taking away the entire solicitation.

636. Q. Then, as I understand you, the 25 per cent would be assigned, in your judgment, 20 per cent to the Santa Fe and the other 5 per cent would be assignable to the exclusion of the El Paso route. Is that correct?

A. It would be assignable to the Western Pacific road.

Q. Please explain to me, if you will, why freight in moving from Cincinnati territory to northern and central California by the Ogden gateway, the Union Pacific and Central Pacific, would be seeking its own channel. Why?

A. I think it would be along the line of least resistance, first—

Q. What do you mean by that?

A. Let me answer, please.

Q. Certainly. I beg your pardon for the interruption.

A. It would be along the line of least resistance, and I think it would pass over roads that were able to give it the best first-class service, and those would be the two important factors. The least resistance would be the shortest line; and I think the Central Pacific, the Union Pacific, the Northwestern, the Pennsylvania road, to the city of Cincinnati or points east of Chicago, would form that kind of a line.

637 Q. What do you mean by saying that that is the routing over which the freight would be best cared for? What do you mean by that?

A. Any freight that passes over first-class roads in every way that receives first-class service in every way, that is expedited to the very best all the time, that is what I mean.

Q. That is a generalization, I think, that we shall all accede to.

A. Yes.

Q. Why would this particular route, by way of Ogden, Union Pacific, and Central Pacific, be the routing over which the freight would be best cared for?

A. I believe that that would be the line selected by any shipper that knew anything about railroads leading from California to Cincinnati in preference to competitors.

Q. In other words, that is the natural route, is it?

A. Absolutely.

Q. And that is the best route?

A. Yes.

Q. That is the route which the Southern Pacific solicitor 638 since February, 1913, has been preferentially soliciting business from Cincinnati territory, is it not?

A. The Southern Pacific representative in Cincinnati territory, I believe, has information—not to my personal knowledge but from hearsay—to use that line. The Southern Pacific representative in Cincinnati territory, on the other hand, at the same time, would not turn down a solicitor or representative of an El Paso gateway connection that came to him to look after some freight originating in that same territory. So that we are not getting the undivided support of the Southern Pacific solicitor in Cincinnati.

Q. I will ask you again if it is not the fact, so far as you know it, that the Southern Pacific solicitor in Cincinnati territory, to-day and since February, 1913, has been working the Ogden gateway preferentially on that business for northern and central California?

A. I believe that by far the greatest amount of business is moved that way, and that would naturally mean that the greatest efforts have been put forth that way; but, at the same time, the other competition is there through the El Paso gateway against that central traffic moving by the Union Pacific.

Q. With respect to Southern California business since 639 February 1, 1913, has the Southern Pacific solicitor been soliciting that business preferentially by the Southern gateways?

A. Altogether.

Q. What is the competition that he meets by the northern gateways on business into southern California?

A. Such competition as I, the representative of the Union Pacific, can put up against him.

Q. In connection with the San Pedro line, is it not?

A. Yes.

Q. And not in connection with the Central Pacific line via Sacramento and the Tehachapi?

A. Eliminating the Central Pacific.

Mr. DUNNE. I have no further questions.

Redirect examination by Mr. McCLENNEN:

Q. On direct examination you referred to the systematic and preconcerted discrimination which had been exercised by the Southern Pacific Company against the Union Pacific Railroad, and on the cross-examination you answered in the affirmative to Mr. Dunne's inquiry as to whether it was an unusual thing in the railroad business that a railroad should prefer its long haul; and this leads me to ask you this question, namely: Leaving out of consideration the Central Pacific Railroad and the Southern Pacific Company which are under consideration in this case, do you know, in the history of railroading in this country, or, indeed, anywhere else, any other railroad which controls a long-haul route and at the same time controls a short-haul route built under acts of Congress imposing upon it a duty, and perhaps an assumed obligation, not to discriminate against another railroad built under acts of Congress; and if you know of any other such instance will you name the railroads?

Mr. DUNNE. I object to the alleged question upon the ground, first, that it is not a question but a speech. I object to it upon the ground, secondly, that it is entirely argumentative, it does not call for any evidential fact, and it is not a proper way to elicit evidence. And I must object, in the third place, to the assumption in the question that this witness is responsible for the polysyllables "preconcerted and systematic discrimination." In the testimony yesterday they emanated from our indulgent and fluent friend on the other side, and, as I recall the proceedings, were acceded to by the witness.

That is all.

(By request of counsel the reporter repeated the pending question.)

The WITNESS. I do not know and cannot name any railroads.

Mr. McCLENNEN. That is all.

Mr. DUNNE. That is all.

Mr. McCLENNEN. It is agreed by counsel that Exhibits Nos. 63 to 10, after being copied into the record, may be returned to the witness. Having regard to the additions to the record since Exhibits 22 and 23 were introduced in evidence, the petitioner now puts in evidence those parts of those exhibits which were read or referred to in the testimony and constitute pages 32 to 53, inclusive, thereof, as admissions of the officers of the defendant Southern Pacific Company and Central Pacific Railroad Company, as declarations showing state of mind, purpose, and intent bearing upon the character

of acts otherwise proved in evidence; as evidence of the limited stock holdings of Messrs. Stanford, Huntington, Hopkins, and Crocker, respectively; and as evidence for any other purpose so far as they may be material or relevant to this case.

MR. BLAIR. Counsel for the defendants renew their objection heretofore made to the admissibility of such evidence, both in form and substance, that the same is incompetent and immaterial, not binding upon the defendants, or any of them, in this case, and irrelevant to any issue in this cause.

MR. McCLENNEN. The petitioner puts in evidence the fact that on September 22, 1914, a letter was delivered by petitioner's counsel to counsel for the defendants, phrased as follows:

"In addition to the pending requests, we shall be pleased if you would furnish us the following:

"50. The production of the Southern Pacific Railroad Company original of the Transcontinental Association contracts of September 28, 1883, and November 8, 1883, copies of which were introduced in evidence yesterday from volume 7, Pacific Railway Commission Reports, pages 4258 to 4261, or an agreement that these copies may be used with the same effect as the original."

To this request counsel for the defendants reply that they know nothing about these agreements and have no one at present whose knowledge extends back that far to consult with reference thereto.

(Whereupon a recess was taken until 2 o'clock p. m.)

JOHN A. MUNROE was called as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:

Direct examination by Mr. McCLENNEN:

Q. Your residence?

A. Omaha, Nebraska.

Q. Address?

A. Care of the Union Pacific, Omaha.

Q. What position do you hold with the Union Pacific?

A. Vice president.

Q. How long have you been connected in some capacity with the railroad?

A. Since and including 1883.

Q. First in what capacity?

A. Assistant general freight agent.

Q. Until what time?

A. Until October, 1884, when I was made first assistant, with headquarters at Kansas City. From there I was brought back to O-

as general freight agent in 1886, and continued later as such until some time subsequent to 1888—I do not recall the date now—when I was made assistant general traffic manager. Then, after 1890, as I recall it, I was made freight traffic manager, which position I held until about three years ago, when I was made vice president; so that I have been identified all that period with the traffic department of the Union Pacific lines.

Q. Have you been stationed at Omaha all the time or were you part of the time at Kansas City?

A. Except 15 months at Kansas City?

Q. Did you receive a request from counsel for the Government to produce, if possible, the Union Pacific Railroad Company copy of a transcontinental agreement of September 28th, 1883?

A. I did.

Q. And also of a similar agreement of November 8, 1883?

A. I did.

Q. Did you have a search instituted to see whether the originals could be found?

A. I did.

Q. What did you find to be the fact in that regard?

Q. A. I was unable to locate the original agreement, but I found a printed copy of a supplemental agreement, dated Topeka, Kansas, November 8, 1883. That is the only original I could find.

Q. Did you also find a typewritten copy of the agreement of September 28th, 1883?

A. Yes; I also located that.

Q. In what custody were those two agreements which you found?

A. With the auditor of the Union Pacific, as custodian.

Q. What has been done with such original agreements of this character as the Union Pacific Railroad had prior to, say, 1906?

A. They were all sent on to New York for filing in the New York office.

Q. And that office was situated where?

A. At that time in the Equitable Building, 120 Broadway, and subsequently burned; now the office is at 165 Broadway.

Q. Did the Equitable fire burn the files of the Union Pacific Railroad Company?

A. It is my understanding that it did.

Mr. McCLENNEN. Petitioner puts in evidence as Exhibit 71 the typewritten copy just referred to by the witness of the agreement of September 28, 1883.

Mr. BLAIR. The defendants object on the ground that there is no proof that it is a correct copy.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 71, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. The petitioner puts in evidence as Exhibit 71 the agreement of November 8, 1883, just referred to by the witness.

Mr. BLAIR. To which counsel for the defendants make the same objection.

(The paper referred to was thereupon marked "Petitioner's Exhibit No. 72, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It appears from inspection that Exhibits 71 and 72 are the same as Exhibits 18 and 19, and it is agreed that they need not be separately copied, but that these original agreements may be returned to the witness and the copies already in the record used with like effect as the originals.

By Mr. McCLENNEN:

Q. Were you asked to make some investigation with reference to freight tonnage interchanged at Ogden between the 648 Central Pacific Railroad and the Union Pacific Railroad?

A. I was.

Q. And have you a statement for certain years in respect to that?

A. I have a statement covering the years 1906 to 1914, inclusive, and by the term "year" I mean the fiscal year ending June 30th. It shows the tonnage received from the Southern Pacific at Ogden by the Union Pacific, and the tonnage delivered by it to the Southern Pacific, the total interchange for each year referred to.

Mr. McCLENNEN. Petitioner puts in evidence the statement just referred to, as Exhibit 73.

(The statement referred to was thereupon marked "Petitioner's Exhibit No. 73, Munroe, October 8, 1914", and will be found in the volume of petitioner's exhibits.)

By Mr. McCLENNEN:

Q. Let me see that we correctly understand this statement. First, am I right that this does not include any tonnage coming from California via the San Pedro route?

A. It does not.

649 Q. The first column obviously indicates the year. The next column—am I right?—is the number of tons in each year in which the Union Pacific received from the Central Pacific; that is, the eastbound tonnage?

A. That is correct.

Q. The next column indicates in dollars the revenue accruing to the Union Pacific only on that tonnage?

A. Correct.

Q. The next column indicates the tonnage delivered by the Union Pacific to the Central Pacific?

A. It does.

Q. That is the westbound tonnage?

A. Correct.

Q. And the next column indicates the revenue only of the Union Pacific upon that tonnage?

A. Correct.

Q. The next column is the total of the preceding tonnage columns, and the last column is the total of the preceding revenue columns?

A. That is right.

Q. This tabulation was prepared under your supervision?

A. It is our regular accounting department form, and I had this specific statement taken from same. The statement is furnished by our auditor each year. This is just a compilation of accounting department statements, Form 925.

Q. What circumstances led to including the years 1906 to 1914?

A. In asking for the statement I asked for about a ten-year statement. I did that for the reason that we have had fires in Omaha, too, and I thought I could go back ten years easily, but might have difficulty in going back farther. I am not sure whether we could go farther or not, but I asked for ten years, and this is what they gave me.

Q. Approximately what revenue per ton accrued to the Union Pacific on the average?

A. A little over seven dollars a ton.

Q. This tonnage included in this statement is the local as well as transcontinental tonnage?

A. Everything interchanged with the Southern Pacific at Ogden.

Q. Are you able to state with any degree of accuracy how much of the westbound tonnage was transcontinental?

A. I would put it at upwards of 80 per cent; and by transcontinental traffic I mean this, traffic having origin or destination east of the Missouri River on the one hand, and destination or origin west of Ogden on the other, because the minute we pass Ogden we enter what we call the transcontinental zone.

Q. Or, to put it in another way, you have used it to indicate tonnage which neither originated nor was delivered upon the rails of the Union Pacific. Is that correct?

A. No; there is some exception in the case of the points on the Missouri River where we do originate and terminate a lot of this traffic. A large amount of it comes from points east of the Missouri River and goes to points east thereof.

Q. You have given 80 per cent as your estimate in the case of the westbound tonnage; what do you say with reference to the eastbound?

A. Well, the eastbound would probably be even larger; that is for the reason that the States west of the Missouri River, natural consumers of California products, have a very limited population as compared with the consumers east of the Missouri River of the same articles, so the bulk of it would be to points off the Union Pacific rail on eastbound to an extent greater than westbound, although they would both be a very large percentage.

652 Q. How would the total revenue of the Central Pacific for this same tonnage compare with the total revenue of the Union Pacific therefor?

A. It would probably be a little less, for the reason that—the, for instance, Omaha as the basic point on the east and Sacramento as the typical central California one on the west. The percentages are 54 to the Union and 46 to the Southern Pacific for the Central Pacific service. These per cents also obtain in the case of the other points on the Missouri River and the other central California terminals. There are some deductions made for the Missouri River bridge at Council Bluffs and for the Bay Transfer on the west, at San Francisco, before prorating; but there would be a limited amount of the traffic going to points outside of the 46 per cent zone, both to the north and south, but I would say, offhand, as a rough estimate, that the Central Pacific earnings—that is, the Southern Pacific Company earnings—would be 90 per cent of those of the Union there named, to which would be added for them what we call back load or differentials on westbound traffic going to interior points taking

higher than the westbound terminal rate. I am speaking 653 that estimate simply of the traffic which is subject to 54 per cent east and 46 per cent west of Ogden.

Q. About how would the total revenue of all lines for moving the freight covered by this Exhibit 73 compare with the revenue of the Union Pacific for the same?

A. Well, I could not give you an answer to that question, because I have not the figures of the many roads competing. My answer would simply be that no single one of them probably would equal the pickings of the Union Pacific, but in the aggregate—you see it involves so many that I am not able at this time to give you an estimate of that.

Q. Did you have some investigation made at the request of the for the petitioner with reference to the movement of Nevada

A. I did.

Q. What did you find to be the fact with reference to the time during which wool rates through Ogden from Nevada to the Atlantic seaboard have been in effect?

A. I found that on September 14, 1909, rates on wool from Winnemucca and points east thereof were first published via Ogden, and that on June 25, 1910, rates were also published from points west of Winnemucca, and that prior to September 14, 1909, rates via Ogden were published only from Elko and east, Elko being the dividing line at that time. West of that point the rates were via the western gateway of Sacramento and east via the Sunset Line to the Atlantic seaboard. Our figures show a very limited movement of wool via Ogden prior to 1909 and a gradual change in the situation since, the tendency being to route all rail, apparently.

Q. Do you know from your general observation of conditions where the heavy part of the wool tonnage from Nevada originating contiguous to the Central Pacific rails and destined to New York or Boston traveled?

A. Very largely from central Nevada; I mean in territory west of Elko and east of a point, we will say, a couple of hundred miles west of Winnemucca, within a zone of, say, 650 miles of Ogden.

Q. How does the great bulk of that wool reach New York and Boston?

A. By way of the Sunset, boat to New York, and then transferred and sent likewise to Boston.

Q. That is hauled west from Nevada to Sacramento and then through El Paso to the Gulf ports?

A. Or New Orleans, as the case might have been.

Q. To New York or Boston?

A. Yes.

Q. When you first had to do with the Union Pacific Railroad, what were the naturally competitive rails, if any, from California to the Atlantic seaboard and to the Central Freight Association territory?

A. The Ogden route and the Mojave route, and Deming and El Paso.

Q. What do you mean by the Mojave route?

A. The line of the Southern Pacific in connection with the Atchison; the Deming route, also similar; the El Paso route, Southern Pacific on the west, various connections east, notably Texas & Pacific.

Q. For convenience, you are speaking of what year?

A. I am speaking of my early connection with the Union Pacific, 1883 or 1884, or right around there. I am not sure but in the case of Mojave the Atchison entered there later; but I think that the Deming route was in force in 1883. That is my recollection of it.

Q. The Deming route, speaking from the east, was over the Atchison to Deming, New Mexico, and thence by Southern Pacific Railroad to California?

A. Yes.

Q. The Mojave route was via what is now the Atchison to Mojave?

A. Yes; then it was either the Atlantic & Pacific or the Southern Pacific owned it from Mojave over to Yuma, as I recall. It was afterwards, I think, leased to the Atchison.

Q. When you say Yuma, do you not mean Needles?

A. Needles, yes.

Q. Do you bear in mind about when the Atchison acquired the piece of road from Needles to Mojave from the Southern Pacific?

A. No; I do not recall the date.

Q. It was along somewhere in the eighties, it is safe to say!

A. That is my recollection of it, yes. I think it is a matter of record in the record.

Q. At this time, in 1883, the Ogden route meant Central Pacific Railroad only west of that point?

A. It did.

Q. And what were the possibilities east of Ogden at that time?

A. Prior to 1883 the Union Pacific was the sole Ogden route.

In 1883 the Rio Grande reached there, and formed connection 657 with the Southern Pacific, making two prongs to the fork to speak, east of Ogden.

Q. Prior to 1885, do you recall that the operations of the Central Pacific Railroad were conducted under the name of Central Pacific Railroad?

A. That is my recollection.

Q. You recall that in 1885 the Southern Pacific Company began to operate that line?

A. About that time, yes. I do not know the exact date.

Q. And that the Southern Pacific Company also operated the Southern Pacific Railroad and the Sunset Route?

A. Yes.

Q. So far as other connecting rails are concerned, was there any material change in the situation after the Atchison reached Mojave somewhere in the eighties, up to the time that the Atchison got into San Francisco over its own rails?

A. Nothing material in the territory north of Tehachapi, as I recall it. Their strength commenced upon the opening of the through line, and they became the Santa Fe all the way to the territory north as well as the territory south and east of Mojave.

Q. It has appeared already in the record that the Atchison 658 got into San Francisco on their own rails in May, 1899. Has

soon after that did that railroad become a substantial factor in the business of California north of Tehachapi?

A. We commenced noticing it right off, first in one field and then in the other. As I recall it, it took them a little while to get a strong foothold at that time and to very materially increase their takings; but their growth was gradual from the day they went north. To-day, of course, they are, as we all know, a strong factor.

Q. How much of an influence had the Atchison exerted on the California freight north of Tehachapi prior to the time when they got into San Francisco?

A. A very limited influence, I have always thought.

Q. The next change in the rail situation was the opening of the San Pedro route from San Pedro and Los Angeles to Salt Lake, and there connecting with the Oregon Short Line and the Union Pacific; is that correct?

A. Yes.

Q. Do you bear in mind that that was somewhere about 1905?

A. 1905.

Q. The next change was the opening of the Western Pacific Railroad in 1910 from Salt Lake to San Francisco Bay?

A. Yes; that is correct.

Q. Did the San Pedro route affect the freight situation in California north of Tehachapi?

A. It did not.

Q. What has been the effect of the Western Pacific on the territory north of Tehachapi, or any part of it?

A. It has increased the competition.

Q. Do you have any reliable knowledge of the extent of their takings of freight?

A. Not in detail as to commodities, except in occasional instances now and then. I know their earnings ran about \$500,000 a month, or something of that nature. We watch their movement and get such information as we can from time to time, but I could not tell you how many cars per day they had or of what commodities.

Q. You mean their proportion of the revenue amounts to the figure which you have mentioned?

A. My recollection is that their statements which they give out to the public show about \$500,000 a month—in the neighborhood of \$6,000,000 a year.

Q. That is, their gross freight receipts?

A. That is, the earnings of their company, the gross earnings.

Q. Does that include their passenger business as well?

A. I so understand.

Q. Do you have any knowledge as to how those earnings divide between freight and passenger?

A. In their case?

Q. Yes.

A. I have not.

Q. Since the Southern Pacific Company assumed the operation of the Central Pacific Railroad and the Southern Pacific Railroad what, if any, competition has there been between those two lines?

A. None.

Q. Prior to the merger of the Southern and the Union, September 1, 1901, what did you observe as to the effort of the Southern Pacific Company with reference to freight between California points on the west and Atlantic seaboard and Central Freight Association points on the east?

A. In the case of the Atlantic seaboard a most substantial, active working preference for the Sunset Route. In the case of the Central Freight Association territory a similar activity as to the southern

portions of it; and by that I mean on and south of a line, say, 061 from, as I recall it, St. Louis via Terra Haute and Danville and the Wabash up to Detroit. South of that line they worked very actively for their southern haul. North of that line they operate in common with the Union Pacific and their other connections in favor of the Ogden route.

Q. South of that Detroit line did the Southern Pacific Company representatives furnish the Union Pacific Railroad any assistance in getting freight via Ogden which could be controlled via the Sunset Route?

A. Their first effort was first, last, and always with the Sunset. If they found by investigation that a shipper south of this line was not inclined to go by their long haul, and there was danger of losing him if they so insisted, and especially if they got a pointer from the Union Pacific people of the shipment being in sight, in that case they would cooperate; but their effort was, of course, in favor of the longer haul via the southern gateways.

Q. Does that answer apply both to westbound and eastbound?

A. It does.

Q. What effect upon this solicitation did the merger between the Southern Pacific and the Union Pacific in 1901 have?

662 A. It changed the policy of the Southern Pacific's solicitation to the extent of preferring the Ogden route in the territory north of the Ohio River. The southern gateways remained preferential south of the Ohio River, and the Ohio River itself was more or less neutral, taking into consideration facilities existing thereon, owned by companies operating out of such points as Cincinnati and Louisville. For instance, the Queen & Crescent and the

Louisville & Nashville were vitally interested in the southern haul, and a northern line might be similarly interested in the northern haul. In that case deference was had to the local conditions somewhat in the solicitation.

Q. What is the natural route between California, north of Tehachapi on the west and Central Freight Association territory and Atlantic seaboard territory on the east?

A. The short route via Ogden, Omaha, and Chicago.

Q. Between those respective territories, from 1883 to 1914, how has the ordinary time actually made by freight trains by this southern route compared with the time by this Ogden route?

A. It has been better by the Ogden route to that section. By "better" I mean a little quicker; the mileage being shorter.

Q. In terms of days, how much better?

A. I would say, on an average, one to two and a half days.

Q. These answers, I take it, are all directed toward freight. We are not speaking of passenger service at present.

A. Exclusively; yes.

Q. What has been the situation on the Ogden route with reference to freight trains keeping or failing to keep their schedules from time to time?

A. No freight train on any line can be operated with clock-like precision; but the Ogden-Omaha route of the Union Pacific has always had a very good record on performance, and while there have been some delays, they have been the exception and not the rule; simply such as are incidental in the ordinary course of transportation; and, relatively, the Ogden-Omaha line has been the equal of any ever since I have known anything about the Union Pacific; and by "any" mean any of its competitors.

Q. What has been the effect upon freight which would naturally move over the Union Pacific, of the solicitation and effort of the Southern Pacific Company since controlling the Central Pacific Railroad?

A. There is no question but what the efforts of the Southern Pacific have been the means of controlling a large volume of traffic via their Sunset Route which, if they had not so put forth their efforts, would have gone by the Ogden route and the Union Pacific.

Q. How extensive and of what duration have these efforts been?

A. Ever since the opening of the Sunset line in 1883, as I recall, the Southern Pacific has been remarkably well organized, very active, and have built up a very handsome business via the Sunset route to and from the East; and their strength has been very pronounced along those lines. We can not help but admire the way

they have controlled the traffic. We do not like to compliment our competitors, but we must give them their due.

Q. Will you indicate in some way by what means they have accomplished this control of freight away from the Union Pacific Railroad?

A. Part of the best testimony I have seen on that particular question was that given by Mr. Stubbs, setting forth in detail the reasons for the success of the Sunset Route. I am speaking now solely from memory. He pointed out the fact that—

665 Mr. BLAIR. We object to this endeavor to incorporate into the testimony indirectly the statements of a man who is not on the witness stand.

Mr. DUNNE. I think, Mr. Munroe, you had better, being the witness, give your own testimony. I think it would be more responsive to counsel's questions, too. You are here to tell what you know, and we shall appreciate it if you will confine yourself to your own knowledge.

The WITNESS. In their efforts in behalf of the Sunset the Southern Pacific have put forth every effort they possibly could, in connection with the transaction of business, to influence patrons to their road and to hold them as clients. There are a thousand and one ways, to speak, in which a common carrier can have influence with a patron. The local situation has a large bearing as to where the freight originates, the ability of the carrier to serve the patron on other than the traffic specifically involved and in question, the disposition to accommodate, and a lot of little things of that kind, all going to his influence with the shipper; and when pressed by the carrier the shipper naturally desires to cooperate as far as he can consistently, without jeopardizing his own interests; and in the case of the

666 Sunset the reforms instituted in the way of prompt settlements of claims, expedited service, special attention to special traffic all tended to strengthen that route at the expense of all of the all-rail carriers overland, conspicuous and first of which was the Union Pacific.

By Mr. McCLENNEN:

Q. Have you any means of putting in terms of percentage how much was diverted from the Central Pacific-Union Pacific route to the Sunset Route?

A. I have not.

Q. Was it a small or a large volume?

A. It was a large volume of traffic, both east and west bound, particularly between California points on the one hand and points on the Atlantic seaboard on the other.

Q. How long has this method of diversion kept up?

A. Up to the present time.

Q. And began when?

A. With the opening of the Sunset Route.

Q. Prior to the merger in 1901 was there any eastbound traffic over the Central Pacific Railroad destined east of the Missouri River, which passed over the Denver and Rio Grande from Ogden?

A. Prior to what date?

Q. Prior to the merger in 1901.

A. Yes.

Q. What happened with respect to that traffic when the merger occurred in 1901?

A. The efforts of the Southern Pacific Company were directed toward favoring the Union Pacific with traffic which it could control against the Rio Grande east of Ogden, the Union Pacific's competitor.

Q. Did that have any effect upon the percentage of the eastbound Ogden tonnage which went over the Denver and Rio Grande?

A. It did.

Q. How did those methods which were pursued to accomplish that result differ from those which were pursued by the Southern Pacific Company to accomplish the diversion to the Sunset Route from the Union Pacific?

Mr. DUNNE. We object to this as calling for a conclusion from the witness, and without repeating this objection we will make the objection to this whole line of inquiry. The witness has been dealing in generalities—I say it with great respect to him—from the beginning, and has not been stating concrete evidentiary facts or figures beyond the table that he has submitted, and we shall object to the wholesale conclusions and generalities of the witness as not being evidence tending to support any issue in this case.

The WITNESS. Substantially similar.

Mr. DUNNE. I would like to add to the objection that it does not appear that the witness was an officer of the Southern Pacific Company at any time.

By Mr. McCLENNEN:

Q. In view of the objection and the appended assertions of fact, in which we can not concur, I will put this question: Will you please describe the methods which were pursued to divert freight from the Union Pacific to the Sunset Route, and the methods which were pursued to divert freight, after the merger, from the Denver & Rio Grande?

A. Active and persistent solicitation.

669 Q. Had there been any classes of freight passing between California and points east of the Missouri River of a character to require more than the usual expedition of freight trains?

A. Yes.

Q. Will you state by way of illustration some of those classes?

A. First, deciduous fruits, then the citrus fruits, and then Asiatic inbound traffic; those are three illustrations that occur to me at this time.

Q. What were the characteristics of the Asiatic eastbound traffic which required expedition?

A. The extreme competition both via the Suez and the northern routes; and by northern routes I mean the Canadian Pacific and the lines operating to the ports of Seattle and Tacoma, made it necessary to put forth extraordinary effort to hold that traffic to the United States lines. Take for instance silk, the most highly priced and important item transported, averaging in value frequently \$200,000 a car. That was moved across the continent in about four and a half to five days, handled in baggage cars especially equipped with passenger train trucks and expedited

670 from coast to coast.

Mr. DUNNE. Is that all rail?

The WITNESS. All rail. And fruit, I am speaking now of deciduous fruit, naturally, from its perishable nature that required expedition to market, and we have always had fruit schedules faster than the ordinary freight train schedules. The same principle obtains on citrus fruit, even though the citrus fruit is not so perishable as the deciduous, but it has always been felt, so far as we were concerned, that we could not differentiate in the schedule between the deciduous of northern California and the citrus of southern California. And a limited amount of live stock, but that would be the exception as compared with the other commodities mentioned.

Q. In the case of those commodities where the character of the commodity or the state of outside competition required the greatest and best service, over what route has the freight moved?

A. The Ogden route.

Q. What are the facts, so far as they have come to your knowledge, which led to this eastbound Nevada wool traveling west and south in order to get to its eastern destination at New York or Boston?

A. Shippers' response to the efforts of the Southern Pacific to favor them with the long haul.

Q. Now, if the Central Pacific Railroad and the Union Pacific Railroad had been operated as one continuous line, how would the freight have moved?

A. Via Ogden and Union Pacific.

Q. There was a time in the history of these roads, was there not, when the representatives of them used to meet together as the Trans-continental Association?

A. Yes.

Q. Did you have anything to do with those meetings?

A. I have attended a number of them.

Q. Who was the representative of the Southern Pacific Company at those meetings?

A. Executives—that is, their traffic officials, notably Mr. Stubbs, during his life Mr. Smurr, Mr. Luce, and their freight-traffic officials.

Q. Mr. Luce is one of the gentlemen we have the pleasure of having with us to-day?

A. He is.

673 Q. Prior to the entrance of the Atchison into San Francisco, in May, 1899, what was the control, if any, of the Southern Pacific over transcontinental rates with reference to central and northern California and north of the Tehachapi Mountains?

A. Practically exclusive with the Southern Pacific. They had more influence than any other one interest, and Mr. Stubbs was looked upon as the father of the Transcontinental Association from his long association with that business, and he was and is a strong, potent factor. The Southern Pacific had more voice in the policy than any other interest.

Q. Prior to the opening of the Western Pacific in 1910 did the Union Pacific have any, and if so what, practicable way of getting freight into California other than over the lines of the Central Pacific Railroad?

A. The Union Pacific depended solely upon the Southern Pacific for its California connection for all territory north of the Tehachapi; and, in fact, it depended upon it for all territory in California prior to 1905. Upon the opening of the San Pedro route in 1905 the Southern California route was the preferred one.

Q. What was the condition of the way and structures of the 673 Central Pacific Railroad prior to the merger in 1901 and of the Union Pacific Railroad?

A. Well, you understand that I am not an operating officer, and not qualified to speak with precision on matters physical, as they could; but as far as the Union Pacific is concerned, it has always been a line second to none between the Missouri River and Ogden, and by second to none I mean everything which attaches to a railroad in its facilities. It has been progressive in the adoption of modern improvements. I think in that respect it has been in advance of the Central Pacific until more recent years. By that I mean it had heavier rails and heavier bridges and was a little in advance in that respect. In the last few years, of course, there have

been a great many improvements made on both properties, and they are nearer alike to-day than they ever have been, and the Central Pacific has been improved marvelously between Ogden and the West.

Q. The improvements to the Central Pacific of which you have just spoken were undertaken and carried out during what period?

A. Very largely subsequent to 1901.

Q. What, if anything, would be the effect upon competition 674 in transcontinental business if the Central Pacific Railroad were operated free from the control of the Southern Pacific Company or any company having another through transcontinental line?

A. A marked increase in competition in everything that the word implies.

Q. Would there be any, and if so what, reduction of the accommodation of shippers resulting from the relieving of the Central Pacific from the control of the Southern Pacific Company?

A. Competition naturally tends toward helping the shippers, and that undoubtedly would be the case in the future as much as it has been in the past.

Q. In dealing with the question of rates on transcontinental freight from and to California have you observed what were the factors influencing the Southern Pacific Company, and, if so, what?

A. My observation is that they have always first regarded the Sunset interests and, based on their diagnosis of them, they move afterwards.

Mr. McCLENNEN. That is all.

675 Cross-examination by Mr. DUNNE:

Q. Mr. Munroe, you are the vice president in charge of traffic for the Union Pacific Railroad, are you not?

A. I am.

Q. Mr. William H. Connor, the witness who testified yesterday and this morning, is one of the commercial agents of the Union Pacific, is he not?

A. He is.

Q. Stationed at Cincinnati?

A. Yes.

Q. And in a general way he reports to you? You are his superior officer?

A. No; he would report to the traffic manager more directly than he would to me.

Q. I quite understand that, but you are over the freight traffic manager?

A. Yes.

Q. I quite understand. Were you present in this room during the morning session and during the entire cross-examination of your subordinate, Mr. Connor?

A. Yes.

676 Q. Now, you have been asked some questions about wool; a good deal of time has been devoted to this question of wool. Were you a witness in the Union Pacific merger case?

A. I was.

Q. Did you give the following testimony in that case?

A. Whatever the record shows.

Q. You had better let me state it. I will invite your attention to it. You were asked the following question by Mr. Severance, and I think during that interesting case I asked you some questions, as this record will develop. Mr. Severance, as counsel for the Government, asked you as follows:

"Q. You have answered to Mr. Dunne that you would not regard a route to Ogden by way of the Southern Pacific around to California as competitive with the Union Pacific system. Is it not a fact that there has been and is still in force a tariff on wool by the Sunset route to Boston which is exactly the same as the tariff over the Union Pacific and its eastern connections from Corinne, Utah, right north of Ogden, and has not business moved on that tariff?

A. I rather think that tariff is in effect.

677 "Q. It has been in effect for many years; it may have been renewed from time to time.

"A. It has been in effect so long that it has become a dead letter. I know that.

"Q. Now, is that true, that it has become a dead letter? Was not that tariff or a new tariff of that kind filed in the spring of 1909 by the Southern Pacific Company according to this record?

"A. I do not know; but if it had been, it would not be at all strange to me. Everybody knows, everybody familiar with the wool traffic in that section, that the Sacramento route cuts no figure whatsoever, and has not for years, on any wool from any point in Utah to any point on the Atlantic seaboard. Now, we have traffic departments, tariff departments; we have inheritances in the way of rate bases; and unless something was said to the contrary, a tariff, once in effect, is reestablished from time to time, but in actual movement the tariff amounts to nothing and we pay no attention to it.

"Q. Years ago traffic did move that way, did it not, and was competed for actively as between the Union Pacific interests and the Southern Pacific?

678 "A. Why, I do not think there was any material movement of the wool traffic that way. There may have been an occasional shipment, but—

"Q. Now, do you know anything about it?

"A. I do know something about it, because we have always had a very respectable eastbound traffic from that section, and I can not recall a case where we were ever influenced in any of our actions by any rate via Sacramento on any Utah wool.

"Q. How about north Nevada and southern Idaho?

"A. I do not think that any rate made on Nevada wool by the Southern Pacific ever had any material effect upon wool from opposite points on the Oregon Short Line, but on that question I am not as well prepared to testify as some others here who have been in direct touch with it; but all the reports made to me indicate that it never has amounted to more than talk out there at Salt Lake."

Did you give that testimony in the merger case?

A. I did; and I would like to repeat every single word of it now with emphasis. I want to call your particular attention to this feature of it: The maximum part of your quotation there refers 679 to Utah wool. They did install this tariff from Utah, and we never paid a particle of attention to it as a Utah proposition I recognize, as set forth in my testimony here, in Nevada the conditions were different—they did take Nevada wool via Sacramento. As to the effect of the Nevada rates upon the Oregon Short Line, I am prepared to state now what I was not perhaps prepared to at the time, but it confirms all that I have said; the rates were lined up on the Meridian principle, but I am not aware of a single case—certainly no report has been made to me indicating that any point in Nevada on the Southern Pacific has during the past few years—and I will say for "the last few years", to make it specific, the last 12 drawn any wool of moment from territory, halfway points, or near the Oregon Short Line Railroad.

680 Q. Then, Mr. Munroe, I am justified in saying, and I understand you to say, that you repeat with emphasis what you said in that testimony as well with respect to Nevada as to Utah wool?

A. Yes.

Q. Now, Mr. Munroe, the relations between the Union Pacific and the Southern Pacific at Ogden for a number of years have been intimate and friendly, have they not?

A. Yes.

Q. Before and after 1901?

A. Yes.

Q. The divisions were always satisfactory to you?

A. Some divisions were and some were not.

Q. I speak of the prevailing division at Ogden—54 and 46.

A. Satisfactory.

Q. In respect to the Sunset line, Mr. Munroe, I understand you to say, or—at all events, it was incorporated in the question of counsel on the other side—that the Sunset line had moved a controlling amount of Atlantic seaboard traffic as against the all-rail lines from the Atlantic seaboard. Do you wish to be understood as generally and year in and year out making that statement?

681 A. I mean this, that the Sunset have put forth every effort within their power to control to their long line every pound of freight between the Atlantic seaboard points on the one hand and points in California on the other.

Q. You miss the point of my question, Mr. Munroe. Has the Sunset line, in respect to its takings, enjoyed the control, or a larger part of that tonnage, year in and year out, from Atlantic seaboard territory as against the all-rail lines or any other line, water or water and rail, engaged in the business?

A. I do not know the percentage relation which the Sunset takings bore to the whole traffic via the New Orleans routes and gateways.

Q. Do you know whether the takings have been, relatively speaking, diminished takings year in and year out in that business?

A. I understand that they have been diminishing, especially during recent years, and from causes perfectly natural, so that no blame could attach to anybody in charge of the Sunset properties for losing the business.

82 Q. What are those perfectly natural causes that you have in mind?

A. Take one case, that of dried fruit eastbound from Oregon, an Joaquin Valley, Fresno and vicinity, moving to the Atlantic seaboard territory; by that I mean all territory east of Buffalo and Pittsburgh—suppose it is going to Boston. If it starts for Boston via the Sunset Route, it comes down and is transferred to the Morgan line boat and goes to New York and is reshipped to Boston. When it gets to Boston it is at its destination. The broker, or whoever may be handling it in Boston, may have wanted to put that car out at Worcester or Springfield, or some other point on the Boston & Albany road. In response to a natural commercial demand the trans-continental lines have given the permission to divert the shipments in transit, and that has a marked effect in the routing of edibles. Take the case of green fruit, citrus fruit, and the Asiatic inbound business of which I spoke; I eliminate those entirely from my mind when I consider traffic as between the Sunset and the Union Pacific route competitive; and that case of dried fruit is one that comes to me as typical.

Q. What other perfectly natural causes have been factors in the relative shrinkage of Sunset takings to the Atlantic seaboard?

A. The improvement of the all-rail service, the adoption

of modern methods by all links in the through all-rail rails; the greater interest taken in transcontinental traffic by lines in Trans-  
Line and Central Freight Association territory; the united effort  
extreme solicitation on the part of the all-rail lines to build up the  
business, coupled with the fact that there is a large traffic eastbound  
notably this deciduous fruit, moving through all-rail by the Ogden  
and other routes, and thereby creating in the Atlantic seaboard cities  
equipment available for through carriage right to the west. All  
those things have been factors in the building up of the all-rail traffic  
and in reducing the tonnage of the Sunset, and of latter years a  
more active factor. The Sunset has been on the firing line, so to  
speak. They have been right up against the extreme water com-  
petition on the Atlantic seaboard of the American-Hawaiian,  
Panama route, the Tehuantepec route, and, of course, the Cape Horn  
route, as long as it existed.

Q. To what extent will the intensity of the water competition be  
reflected by the Panama Canal, if at all?

A. Of course it is problematical what the effect of the Panama  
Canal is going to be. We are having a very keen object lesson  
684 this week in rates so extremely low offered by the water car-  
riers that it is very doubtful whether the rail lines can remain  
in a large amount of the low-rated traffic.

Q. Just one further question: What is the water route, if you  
know, that will be adopted and used by the American-Hawaiian Com-  
pany, of whose intense competitive activity you have spoken, on the  
opening of the canal?

A. Why, they use the canal route.

Q. Yes. In the earlier days of the Sunset Route, when the trans-  
portings were larger, was the magnitude of the Sunset takings explainable  
by reference to the negligent attitude of the transcontinental  
railroads, the all-rail lines, in respect to that business?

A. Partly.

Q. That was a factor, was it not?

A. One of the factors.

Q. To the extent that the Sunset line is a rail line now, is the  
Sunset line a competitor of the Union Pacific-Ogden route  
Chicago territory business to and from California?

A. It is a competitor in the sense of its power to take a certain  
amount of the traffic, but in actual experience we do not regard, for  
instance, the Illinois Central line to New Orleans and the

685 Southern Pacific line west as a competitor worthy of  
recognition on San Francisco and central California business.

As I think I stated in one hearing held here in Chicago, when you  
start from Chicago and get to New Orleans you are farther west

from San Francisco than you were when you started, and I could not reconcile my mind to looking upon that line as a competitor; I mean a competitor in the sense of being able to take away traffic from us. There are occasional shipments that way from causes entirely foreign—facilities and things of that nature—but we do not regard it as an active competitor.

Q. You do not regard the Sunset line as a competitor on Chicago business, and you never have so regarded it?

A. No; in practice we do not.

Q. Why not?

A. It is too roundabout.

Q. What would be the rail routes by which freight would move from Chicago and over the Sunset rails into California?

A. The most direct route, I would say, would be the route of the Rock Island System and the El Paso & Southwestern from here to El Paso, connecting there with the Southern Pacific. I do not believe there is any route between here and New Orleans, or junctions in that immediate vicinity, that could hold its own as against the El Paso route of the Southern Pacific or the Albuquerque route of the Atchison, or the Salt Lake route of the Union Pacific.

Q. Is the long haul of the Illinois Central from Chicago to New Orleans?

A. It is.

Q. Has the Illinois Central a line all the way from Chicago to New Orleans?

A. It has.

Q. Is it a connection at New Orleans of the Southern Pacific?

A. It is.

Q. And the reason why the Sunset line, in respect to Chicago business, is not a competitor, and you have never regarded it as such, is that that route is too roundabout?

A. Too roundabout. I would like to add as a matter of information that the Illinois Central has a line also to Omaha. They cover two sides of the square, so to speak, the longer line being to New Orleans, and they endeavor to fairly apportion their territory so as to give the best service to the patron. I do not think you would find them trying to work the New Orleans as against the Omaha one on a shipment from a point in Illinois, we will say, a couple of hundred miles south. When you get down south of there they would try it; but they have to have regard to the service possible by their competitors via the Missouri River gateways.

Q. That is the thought and that is the factor which they have in mind, is it not?

A. Yes; they can not make a success of the New Orleans route. That is true, undoubtedly. That is one of the reasons.

(By request, the reporter repeated the question, as follows:)

"That is the thought and that is the factor which they have in mind, is it not?"

The WITNESS. I think so. One of them.

By Mr. DUNNE:

Q. Mr. Munroe, has there been competition south of the Ohio River—as to points south of the Ohio River—between the Ogden gateway and the southern routes?

A. Yes.

Q. To a large or to a limited extent?

A. Not as active as north. The southern route has a decided advantage down there and the northern lines can not get very much of that business.

Q. It would be correct to say, then, that the competition  
688 was only to a limited extent?

A. Limited south of the Ohio River.

Q. North of the Ohio River does not the business move naturally by the northern gateways? Is not that the natural and normal traffic course of the business?

A. We think so.

Q. Since the establishment of the San Pedro line, in 1905, that has been the Union Pacific's preferential route on southern California business, has it not?

A. It has.

Mr. DUNNE. I think that is all I care to ask you.

By Mr. BLAIR:

Q. You spoke of the opening of the Sunset Route in February, 1883. That was the date, was it not?

A. I was not clear as to the month; but it was in 1883, according to my recollection.

Q. I believe you said that from the date of its opening it was the policy to preferentially route to and from California to the Atlantic seaboard territory by that Sunset Route?

A. Yes, sir.

Q. That Sunset Route, as you understand, went down to El Paso and then into New Orleans and then by boat to New York?

689 A. Yes.

Q. That Sunset Route was under a unified management at that time?

A. It was.

Q. The same management as the Central Pacific?

A. Yes.

Q. So that the Central Pacific from Ogden to San Francisco and the Sunset Route from the time that it came into existence, in 1883, was under a unified management or control?

Mr. McCLENNEN. We note an objection to the question, that it is prefaced by an assertion of fact which, we submit, is not borne out by the evidence and as calling for matter which in the nature of things can not be within the personal knowledge of the witness.

(By request, the reporter repeated the pending question.)

The WITNESS. That is my understanding.

Mr. McCLENNEN. We note an objection to the answer as stating a conclusion and an inference, not a fact.

Mr. BLAIR. The witness is yours.

690 Redirect examination by Mr. McCLENNEN:

Q. You have said, in response to one of Mr. Dunne's questions, that the great success of the Sunset Route may have been due in some measure to the negligence of the all-rail routes, and I shall be obliged if you will inform me whether the Central Pacific Railroad was one of the all-rail routes whose negligence so contributed.

Mr. DUNNE. I object to the question, upon the ground that in so far as it attempts to reproduce the testimony of the witness in respect to the Sunset Route the verbiage of the question does not correspond to the testimony, and does not reproduce it.

The WITNESS. The Central Pacific is one of the links in the all-rail chain from the Atlantic coast to San Francisco, although when I made the answer I did not have that company at all in mind. What I referred to was this: The Union Pacific and all its connections east of Council Bluffs through Chicago have always been and are to-day actively interested in this transcontinental traffic. The negligence to which I referred was due to the extremely heavy traffic

691 and rapid growth in Trunk Line territory a few years ago, which taxed their energies to the utmost, and they therefore had a minimum of time and attention to devote to the transcontinental traffic. That was due to causes which were temporary. Upon the removal of those causes the Trunk Line and the Central Freight have been actively responding in interest to the through service.

By Mr. McCLENNEN:

Q. The negligence which you had in mind was a period of some two years ago, if I understand you?

A. Partly then, and periodically in times of trouble and congestion; they did not seem to appreciate the volume of the Pacific coast traffic.

Q. Can you define any more definitely the periods to which you refer?

A. I would say it referred to periods more prior to two years ago than since. We had a depression, of course, in 1893 to 1898, and we saw some of that feeling then; but for the last five years—I do not know but for the last ten years; I think I could safely say ten—the feeling has disappeared and we have no cause to complain of negligence upon the part of any of our eastern connections. I do not believe they were ever wilfully disposed to be negligent, but they carelessly lost sight of certain business in which we were

692 vitally interested.

Q. During the period when the Southern Pacific Company was urging the Sunset Route to the extent that you have testified, did the Central Pacific Railroad, or those in control of it, put forth efforts to make the all-rail route a better competitor with the Sunset Line, and if so, what effort did they put forth?

A. I am not aware of any action ever taken by the Southern Pacific in the administration of the Central Pacific looking to the betterment of the Central Pacific route as against the Sunset. There have been improvements of various kinds and character installed on the Central Pacific in common with the Union Pacific; but they have not been controlled for or against by the Sunset conditions.

Q. Your attention has been called to the competition now presented by the American-Hawaiian Line traveling through the canal, through the Isthmus of Panama; was there, prior to the existence of the American-Hawaiian Line, a route from San Francisco via the Isthmus of Panama to New York?

A. Yes.

Q. And that was composed of what?

693 A. Pacific Mail ships on the west coast and the Panama Canal as the intermediary, and ships on the Atlantic coast.

Q. Has that, up to the opening of the canal, and in years past, been any substantial business?

A. It has always been a factor in the business.

Q. Do you know by what the Pacific Mail Steamship Company link in that line has been controlled?

A. They have their own separate organization, with R. P. Schwerin as I recall it, as president—I think that is his title—of the Pacific Mail Steamship Company. Naturally they are very closely in touch with the owners of the property, one of whom is the Southern Pacific, I believe.

Q. Do you know whether or not the all-rail lines from time to time bought a definite space in the boats plying between San Francisco and Panama, and Colon and New York?

A. I know that years ago there was, for a time, what was called a space-rental arrangement between the transcontinental lines and

the Pacific Mail Steamship Company, and there was certain traffic thrown to them under that arrangement.

Q. Under those arrangements did the rail lines pay for the space whether it was occupied or not?

A. My recollection is that they did.

Q. Did the rail lines contribute towards those payments according to their division of the rail transcontinental rates?

A. I do not recall the factors obtaining as to the subdivision, but I rather imagine some basis of that kind.

Q. The incentive to the railroads in doing that was to prevent the competition made by that line?

Mr. BLAIR. We object to that as plainly leading and suggestive.

The WITNESS. To minimize the competition and to preserve the rail revenues.

By Mr. McCLENNEN:

Q. In view of the objection, I will ask you if you will state what the purpose of the railroads was in making those arrangements.

Mr. BLAIR. Counsel call attention to the fact that the evil effect of the question is already had, as is obvious, and counsel do not accept the tardy correction as any answer to the original objection.

(By request the reporter repeated the pending question.)

The WITNESS. To protect their revenue.

By Mr. McCLENNEN:

Q. Was the Southern Pacific Company one of the companies cooperating in those arrangements?

A. It was.

Q. Those agreements with the component parts of the Panama Route covered what periods of time? Do you remember?

A. I do not recall the year, but my recollection is that it was prior to the taking effect of the interstate law.

Q. That would be 1887?

A. The interstate law took effect April 4, 1887, as I recall it. I understand there were no legal objections at the time to that sort of an agreement or arrangement. If there had been, of course, the roads would not have gone into it.

Recross-examination by Mr. DUNNE:

Q. Was the Union Pacific a party to that Panama agreement?

A. It was.

Q. Has that agreement been in force for the last thirty years, in round figures?

A. The number of years I do not know; but it has not been in force since 1887, practically twenty-seven years.

Q. The Pacific Mail Steamship Company, at the time the Southern Pacific Company became interested in it, was plying between the port of San Francisco and the ports of call in the Orient, was it not?

A. Yes.

Q. And prior to the time the Occidental & Oriental Steamship Company had been plying between the port of San Francisco and the ports of call in the Orient, had it not?

A. Yes, sir.

Q. That inbound Asiatic business that you spoke of moved all through the Ogden gateway to its overland destinations, did it not?

A. It did.

Q. Were the Union Pacific and the Southern Pacific Company partners, using the term freely, in the Occidental & Oriental Steamship Company?

A. They were.

Q. If your testimony has conveyed the impression that the negligence of the railroad companies which has been suggested here as an explanation to an extent more or less of the Sunset takings—if your testimony has conveyed the impression that that negligence was of recent years, are you not mistaken about that?

A. I said that it was more a case of prior to two years ago than it was since that date; and I did refer more particularly to prior to ten years ago, and so stated in the record.

Q. I will carry you back still further than a decade, and I will ask you if the negligence of the railroads as a factor in the taking of the Sunset line does not go back to the earlier and pioneer days of the Sunset line in Atlantic seaboard business?

A. I did not come in contact with it so much in the very early pioneer days as I did afterwards, but it may have obtained just the same, because when I first went with the Union Pacific I was assigned especially to traffic other than transcontinental, and devoted the major portion of my time to that, and only had a limited amount on the transcontinental traffic. Later I became more closely associated and associated with the transcontinental traffic.

Q. Do you not recall that in the early days of the Sun Route, when it was first launched, its takings of Atlantic seaboard business reached 80 or 85 per cent, and it was in those days that the railroads were negligent in respect of the traffic, and that that large percentage was attributable to that very negligence of the roads?

A. No; I could not subscribe to that. I do recall, now, that at a period the rail lines withdrew from the Atlantic seaboard traffic account of the extremely low rates being made by competitors, and what might have been termed the apathy of the trunk lines, and the Southern Pacific was used to fight that battle, so to speak, and all

wards, when peace was declared and conditions changed, the all-rail lines got back into the business; and during that period, of course, the Sunset built up a traffic, and held afterwards a good share of what they did build up.

Q. And the rates went back?

A. And the rates went back.

Q. As a witness in the Union Pacific merger case, did you give the following testimony:

"Q. Now, the Southern Pacific by its Sunset Route was carrying at times, according to the testimony here, 80 or 85 per cent of 699 the business from New York pier to San Francisco. If you had cut that rate by Portland and thereby caused a cut all along the line, as you say, the Southern Pacific, through its enormous tonnage over the Sunset Route, would have suffered very severely in revenue, wouldn't it?

"A. I don't think the Southern Pacific's 85 per cent takings were due entirely to the rate. I think they were due more to negligence of the all-rail overland carriers."

Did you give that testimony?

A. If the record says so.

Mr. DUNNE. That is all.

By Mr. BLAIR:

Q. Just one more question: You say that at a certain period the Sunset Route was used by the railroads. What railroads?

A. I said the all-rail routes. My recollection is this: That the all-rail lines canceled their through tariffs very largely from the Atlantic seaboard to the Pacific and confined their tariffs temporarily to Chicago and west; and that resulted in the through rates via Chicago being very much higher than those obtaining via the Sunset. In other words, the all-rail lines did not make any attempt to 700 meet the rate conditions, but the Sunset did.

Q. You said something about the Sunset having to bear the brunt of the fight?

A. Yes; I spoke of that looking upon the Sunset as one of the members of the Transcontinental Association.

Q. You said something about the Sunset being used to bear the brunt of the fight. Used by what interest?

A. The Southern Pacific stayed in the field and used their Sunset weapons to fight the battles against the competitors in common of the overland carriers.

Q. In other words, the fight was on against the Sunset Route and the all-rail lines on the one side and some water competitors on the other hand.

A. No; the fight was the Sunset against the field.

Q. What was the field?

A. All water carriers or any other line going across the—

Q. What year was that?

A. I do not recall.

Q. Was it not about 1893?

A. I do not recall the year. I would have to look up the records.

701 Q. Was it not initiated by the water lines?

A. My recollection of the whole transaction is more or less hazy.

Q. I think so.

A. I just simply happened to think of it after Mr. Dunne had pointed the matter out.

Q. Then your statement of the facts in connection with that—I do not use the expression in any offensive sense—is not entirely reliable.

A. I would not want to offer in evidence here my memory as being perfect.

Q. Especially when you said you were hazy about the transaction.

A. It is not clearly impressed on my mind.

Q. And you do not know how the controversy started?

A. I have a very distinct recollection of one conference about the matter held here in Chicago, at which I think Richard Gray was present; and as a result of that the Sunset undertook to meet the competition which the transcontinental lines were face to face with and the overland carriers practically withdrew from the business.

Q. You say "undertook." At the request and suggestion of the all-rail lines?

A. It was done with the full knowledge and consent of the all-rail lines.

Q. And at their request?

A. I do not know whether they made the first suggestion or not but they acquiesced in it at all events.

Q. And in their interest?

A. We thought so at the time. We learned afterwards, however, hindsight being better than foresight, that if we had to do it over again perhaps we would not have done it.

Q. Well, that would open a long question. That is all.

By Mr. McCLENNEN:

Q. This matter of the Panama route and Panama agreements something to which your attention had not been called prior to taking the stand; am I right?

A. You are right.

Q. And you are speaking without having had any opportunity to investigate dates?

A. That is correct.

703 Q. You have not had called to your attention even that the agreement between the railroads composing the Transcontinental Association and the Pacific Mail Steamship Company, put in evidence in this case as petitioner's Exhibit 24, is dated October 1, 1889?

A. No; I had not had my attention called to it at all. My impression was that it was prior to 1887.

Mr. McCLENNEN. That is all.

Mr. BLAIR. That is all.

Mr. DUNNE. I have no further questions.

(Whereupon an adjournment was taken until to-morrow, Friday, October 9, 1914, at 11.30 o'clock a. m.)

704

TENTH DAY.

(The hearing set for Friday, October 9, 1914, in Chicago, was adjourned subject to notice.)

ROOM 1620, 90 WEST STREET,  
New York City, November 4, 1914.

Before Special Examiner Frank R. Hanna.

No appearances.

The petitioner puts in evidence as Exhibit No. 74 a skeleton plan of through lines.

Counsel for defendants object to Exhibit No. 74 as incompetent evidence.

(The plan referred to was thereupon marked "Petitioner's Exhibit No. 74, November 4, 1914.")

The petitioner puts in evidence as Exhibit No. 75 the copy certified by the Assistant Secretary of the Interior of the acceptance filed with the Secretary of the Interior by the Southern Pacific Railroad Company of the act of Congress of July 27, 1866.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 75, November 4, 1914", and will be found in the volume of petitioner's exhibits.)

705 The petitioner puts in evidence as Exhibit No. 76 the copy certified by the Assistant Commissioner of the General Land Office of the acceptance filed with the Secretary of the Interior by the Southern Pacific Railroad Company of the act of March 3, 1871.

(The copy referred to was thereupon marked "Petitioner's Exhibit No. 76, November 4, 1914", and will be found in the volume of petitioner's exhibits.)

(Whereupon a further adjournment was taken subject to notice.)